

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	Chapter 11
CLOUD PEAK ENERGY INC., <i>et al.</i> ,)	Case No. 19 – 11047 (KG)
Debtors. ¹)	(Jointly Administered)
)	Re: Docket No. 52

**ORDER (I) APPROVING BIDDING PROCEDURES,
(II) SCHEDULING THE BID DEADLINES AND THE AUCTION,
(III) SCHEDULING HEARINGS AND OBJECTION DEADLINES
WITH RESPECT TO THE SALE, (IV) APPROVING THE FORM AND
MANNER OF NOTICE THEREOF, (V) APPROVING CONTRACT ASSUMPTION
AND ASSIGNMENT PROCEDURES, AND (VI) GRANTING RELATED RELIEF**

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (the “**Bidding Procedures Order**”):

(i) authorizing and approving the proposed bidding procedures (the “**Bidding Procedures**”) attached hereto as **Exhibit 1**, including the form of asset purchase agreement attached thereto (the “**Form of Asset Purchase Agreement**”) in connection with one or more sales (each a “**Sale**”) of all, substantially all, or any combination of the Debtors’ assets (collectively, the “**Assets**”) free and clear of all claims, liens, and encumbrances; (ii) scheduling an auction in connection with the Sale (the “**Auction**”), hearing dates in connection with approval of the Sale

¹ The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors’ service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

(the “*Sale Hearing*”), and the objection deadline for the Sale Hearing (collectively, the “*Sale Schedule*”); (iii) approving the form and manner of notice of the Auction and Sale, attached hereto as **Exhibit 2** (the “*Auction and Sale Notice*”); (iv) approving procedures (the “*Assumption and Assignment Procedures*”) for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (collectively, the “*Assigned Contracts*”), and approving the form and manner of the Cure Notice; and (v) granting related relief, and (b)(i) authorizing the Sale to the Winning Bidder free and clear of all liens, claims, interests and encumbrances, (ii) authorizing the assumption and assignment of the Assigned Contracts, and (iii) granting related relief all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declaration; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. Any objections to the Motion not resolved or otherwise withdrawn are

OVERRULED.

A. Important Dates and Deadlines.

3. The Sale Schedule is approved as set forth below and subject to modification in accordance with the Bidding Procedures.

- a. **Indication of Interest Deadline.** June 14, 2019, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which any party interested in a transaction shall submit a non-binding indication of interest.
- b. **Bid Deadline.** July 8, 2019, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which bids for the Assets (as well as the deposit and all other documentation required under the Bidding Procedures for Qualified Bidders) must be submitted.
- c. **Stalking Horse Bidder and Bid Protections.** The Debtors may, at any time until two calendar days prior to the date of the Auction, select one or more parties to be a Stalking Horse Bidder with respect to some or all of the Debtors' Assets.
- d. **Auction.** July 11, 2019, at 11:00 a.m. (prevailing Eastern Time) is the date and time that the Auction, if any, will be held at Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York, 10019, or such later date, time, and location, as selected by the Debtors.
- e. **Sale Objection Deadlines.** July 16, 2019, at 11:00 a.m. (prevailing Eastern Time) is the deadline (the "***Sale Objection Deadline***") by which all objections to the Sale (including to any Winning Bids or any Assigned Contract Objection (other than the Supplemental Assigned Contract Objections which are subject to the Supplemental Assigned Contract Objection Deadline)) must be filed with the Court.
- f. **Sale Hearing.** The hearing approving the Sale to the Winning Bidder(s) shall take place before the Court on July 18, 2019, at 10:00 a.m. (prevailing Eastern Time).

B. The Bidding Procedures.

4. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed sale of the Assets. Any party desiring to

bid on one or more individual Assets or all or substantially all of the Assets shall comply with the Bidding Procedures and this Bidding Procedures Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

C. The Auction.

5. If the Debtors receive two or more Qualified Bids with respect to All Assets or the same or similar Asset Package, as applicable, then the Debtors will conduct the Auction to determine the Winning Bidder(s) (as defined below) with respect to such Assets. The Debtors and their professionals shall direct and preside over the Auction.

6. At the Auction, Qualified Bidders that have submitted Qualified Bids by the Bid Deadline will be entitled, but will not be obligated, to submit Overbids, and will be entitled in any such Overbids to credit bid all or a portion of the value of the secured portion of its claims within the meaning of section 363(k) of the Bankruptcy Code, subject to the limits on credit bidding set forth in the Bidding Procedures.

7. Any initial Overbid to the Baseline Bid(s) shall be no less than the value of the Baseline Bid(s)'s Purchase Price of the Assets, plus \$250,000 plus the amount of the Bid Protections, if any.

8. Any subsequent Overbids shall be in increments of value equal to \$250,000, as determined by the Debtors in an exercise of their reasonable business judgment.

9. The Auction shall continue until the Debtors select, in their reasonable business judgment, pursuant to the Bidding Procedures, the highest or otherwise best Qualified Bid for All Assets or each of the Asset Packages, as applicable. Such Qualified Bid shall be declared the Winning Bid, and such Qualified Bidder, the Winning Bidder, and at which point the Auction will be closed.

10. The Debtors may reject any Bid (regardless of whether such Bid is a Qualified

Bid) that, in the Debtors' business judgment, is (a) inadequate, insufficient, or not the highest or best Bid, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, or the Bidding Procedures, or (c) contrary to, or otherwise not in the best interests of the Debtors' estates, affected stakeholders, or other parties in interest.

11. The Debtors are authorized to select one or more parties to be a Stalking Horse Bidder with respect to some or all of the Debtors' Assets, *provided* that any such Bid Protections shall be subject to approval by the Court, which the Debtors are authorized to seek on an expedited basis pursuant to section 105(a) of the Bankruptcy Code and Local Rule 9006-1(e). No person or entity, other than any Stalking Horse Bidder, is entitled to Bid Protections.

D. Notice Procedures.

12. The Auction and Sale Notice substantially in the form attached hereto as **Exhibit 2** is approved.

13. Notice of the Motion coupled with service of the Auction and Sale Notice (together the "*Notice*"), constitutes good and adequate notice of the Auction and Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002.

14. No other or further notice of the Auction and Sale shall be required.

E. The Assumption and Assignment Procedures.

15. The Assumption and Assignment Procedures are approved.

16. The notice to be provided under the Assumption and Assignment Procedures shall constitute adequate and sufficient notice and no additional notice need be provided.

17. On or before June 21, 2019, the Debtors shall file with the Court, and serve on the Contract Counterparties, the Cure Notice, substantially in the form attached hereto as **Exhibit 3**, including the Assigned Contracts Schedule.

18. Service of a Cure Notice does not constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract or unexpired lease or that such Assigned Contract will be assumed at any point by the Debtors or assumed and assigned pursuant to any Winning Bid.

19. Assigned Contract Objections, if any, must comply with the Assigned Contract Objection Requirements and be filed with the Court no later than the Sale Objection Deadline.

20. Any Assigned Contract Objection that remains unresolved as of the Sale Hearing, shall be resolved at the Sale Hearing, but such Assigned Contract shall be assumed and assigned only upon satisfactory resolution of the Assigned Contract Objection, to be determined in the Winning Bidder's discretion. If an Assigned Contract Objection is not satisfactorily resolved, the Winning Bidder may determine that such Assigned Contract should be rejected and not assigned, in which case the Winning Bidder will not be responsible for any Cure Costs or Adequate Protection with respect to such contract.

21. If at any time: (a) the Debtors discover contracts inadvertently omitted from the Assigned Contracts Schedule; (b) the Winning Bidder identifies other executory contracts or unexpired leases that it desires to assume and assign in connection with the Sale; or (c) any proposed Cure Cost or Adequate Assurance requires modification, then the Debtors may, at any time after the Assumption and Assignment Service Date but before the Sale Hearing: (x) supplement the Assigned Contracts Schedule with previously omitted Assigned Contracts; (y) remove any Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts that the Winning Bidder proposes be assumed and assigned to it in connection with the Sale or add to such list; and/or (z) modify the proposed Cure Costs or Adequate Assurance.

22. Supplemental Assigned Contract Objection, if any, must comply with the Assigned Contract Objection Requirements and be filed with the Court no later than the Supplemental Assigned Contract Objection Deadline.

23. Any Supplemental Assigned Contract Objection that remains unresolved as of the Sale Hearing or Supplemental Assigned Contract Hearing, as applicable, shall be resolved at such hearing, but such Assigned Contract shall be assumed and assigned only upon satisfactory resolution of the Supplemental Assigned Contract Objection, to be determined in the Winning Bidder's discretion. If a Supplemental Assigned Contract Objection is not satisfactorily resolved, the Winning Bidder may determine that such Assigned Contract should be rejected and not assigned, in which case the Winning Bidder will not be responsible for any Cure Costs or Adequate Protection with respect to such contract.

24. If a Contract Counterparty does not file an Assigned Contract Objection or Supplemental Assigned Contract Objection, and absent a subsequent order of the Court establishing an alternative Cure Cost: (a) the Cure Costs and Adequate Assurance, if any, set forth in the Cure Notice (or Supplemental Cure Notice) shall be controlling, notwithstanding anything to the contrary in any Assigned Contract or any other document; and (b) the Contract Counterparty will be deemed to have consented to the assumption and assignment of the Assigned Contract and the Cure Costs and Adequate Assurance, if any, and will be forever barred from objecting to the assumption and assignment of such Assigned Contract and rights thereunder, including the Cure Costs and Adequate Assurance, if any, and from asserting any other claims related to such Assigned Contract against the Debtors or the Winning Bidder.

25. The inclusion of an Assigned Contract on the Assigned Contract Schedule or Supplemental Assigned Contract Schedule, will not: (a) obligate the Debtors to assume any

Assigned Contract listed thereon or obligate the Winning Bidder to take assignment of such Assigned Contract; or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract or unexpired lease. Only those Assigned Contracts that are included on a schedule of assumed and assigned contracts attached to the definitive sale agreement with the Winning Bidder (including amendments or modifications to such schedules in accordance with such agreement) will be assumed and assigned to the Winning Bidder.

F. Miscellaneous.

26. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Bidding Procedures Order in accordance with the Motion.

27. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Bidding Procedures Order shall not diminish or impair the effectiveness or enforceability of such provision.

28. In the event of any inconsistency between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

29. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Bidding Procedures Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

30. Notwithstanding anything to the contrary herein or in the Bidding Procedures, the entry of this Bidding Procedures Order and the relief granted hereby is without prejudice to the rights of any party to object or respond to a Sale, any chapter 11 plan, the APA, or any other document or instrument contemplated by any of the foregoing, and all such rights are reserved

and preserved in all respects.

31. Nothing in this Bidding Procedures Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any party (including the Sureties,³ the Debtors, the Debtors' lenders, or any prospective purchaser) has or may have under applicable bankruptcy and non-bankruptcy laws, under any indemnity agreements, surety bonds or related agreements, or any letters of credit relating thereto, or any rights, remedies, or defenses of the Debtors with respect thereto.

32. Nothing in this Order, including the form of the APA, shall be deemed to provide a Surety's consent to the involuntary substitution of any principal under any surety bond.

33. Nothing in this Order shall be deemed to relieve the Debtors of any obligations under any applicable federal, state, or local police or regulatory laws or under 28 U.S.C. § 959(b).

34. The Sureties' objections [Docket No. 165] with respect to the Sale and the APA are hereby reserved and such objections may be amended or supplemented by each such Surety from to time and up to and including the Sale Objection Deadline.

35. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

36. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

37. The requirements of Local Rules 9006-1(c)(ii) and 9029-3(a)(i) are hereby

³ Arch Insurance Company, Argonaut Insurance Company, Aspen American Insurance Company, Fidelity and Deposit Company of Maryland, Colonial American Casualty and Surety Company, American Guarantee and Liability Company, and North American Specialty Insurance Company are collectively referred to as the "Sureties" and each, individually, referred to as a "Surety."

waived.

38. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Bidding Procedures Order.

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1 TO ORDER

BIDDING PROCEDURES

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

CLOUD PEAK ENERGY INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19 – 11047 (KG)

BIDDING PROCEDURES FOR THE SALE OF THE DEBTORS' ASSETS

On May 10, 2019 (the “**Petition Date**”), the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). On May 13, 2019, the Debtors filed the *Motion of Debtors for Entry of Orders (A)(I) Approving Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Contract Assumption and Assignment Procedures, and (VI) Granting Related Relief and (B)(I) approving the Sale of the Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. 52] (the “**Motion**”) seeking approval of, among other things, the procedures by which the Debtors are authorized to conduct an auction (the “**Auction**”), if any, for the sale (the “**Sale**”) of all, substantially all, or any combination of the Debtors’ assets (the “**Assets**”) to the Winning Bidder.² On [•], 2019, the Court entered an order with respect to the Motion [Docket No. [•]] (the “**Bidding Procedures Order**”) approving the procedures contemplated herein, (the “**Bidding Procedures**”) and granting certain related relief.

The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

² Capitalized terms used but not defined herein have the meaning given to such terms in the Bidding Procedures Motion.

Marketing Process and Participation Requirements

A. Confidentiality Agreement.

The Debtors, in consultation with their proposed investment banker, Centerview Partners LLC (“***Centerview***”), developed a list of parties whom they believe may be interested in, and whom the Debtors reasonably believe would have the financial resources to consummate, a Sale. The Debtors and Centerview also solicited and incorporated feedback regarding such list of parties from Houlihan Lokey Capital, Inc., the proposed investment banker to the ad hoc group of 2021 noteholders (the “***Ad Hoc Group***”). The Debtors shall distribute to each such party (to the extent not already distributed) and any other interested party an “Information Package” consisting of: (i) a copy of these Bidding Procedures, the Bidding Procedures Order, and the Motion; (ii) a form confidentiality agreement (a “***Confidentiality Agreement***”); and (iii) such other materials as the Debtors deem appropriate under the circumstances.

To receive due diligence information, including full access to the Debtors’ electronic data room and additional non-public information regarding the Debtors, a party potentially interested in bidding on the Assets must deliver an executed Confidentiality Agreement on terms acceptable to the Debtors, to the extent not already executed, to each of: (i) the Debtors, c/o Cloud Peak Energy Inc., 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021, Attn. General Counsel; (ii) proposed counsel to the Debtors, (a) Vinson & Elkins LLP, 666 Fifth Avenue, 26th Floor, New York, New York 10103, Attn: David S. Meyer (dmeyer@velaw.com) and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Paul E. Heath (pheath@velaw.com) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, DE 19801, Attn: Daniel J. DeFranceschi; and (iii) proposed investment banker for the Debtors, Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York, 10019 Attn: Marc D. Puntus (mpuntus@centerview.com) and Ryan T. Kielty (rkielty@centerview.com) (collectively, the “***Debtor Notice Parties***”).

B. Electronic Data Room and Due Diligence.

After a party delivers the executed Confidentiality Agreement in accordance with these Bidding Procedures, the Debtors shall provide such party with access to an electronic data room and due diligence information, as reasonably requested by such party, and the Debtors shall post substantially all written due diligence provided to any such party to the Debtors’ electronic data room. All due diligence requests must be directed to Centerview. To the extent necessary and reasonably practicable, Centerview will also facilitate meetings between any such party and the Debtors’ other restructuring advisors and management team. The Debtors and their advisors will coordinate all reasonable requests from such parties for additional information and due diligence access; *provided* that the Debtors may decline to provide such information to any party who, at such time and in the Debtors’ reasonable business judgment, in consultation with the Ad Hoc Group, the lender parties under the Debtors’ proposed debtor-in-possession financing facility (the “***DIP Lenders***”), and any official committee of unsecured creditors appointed in these chapter 11 cases (collectively, the “***Consultation Parties***”), has not established that it intends in good faith to, or has the capacity to, consummate a Sale. Parties which enter into Confidentiality Agreements with the Debtors will not, directly or indirectly, contact or initiate, or engage in discussions with respect to matters relating to the Debtors or a potential transaction with any customer, supplier, or

contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline (as defined below), and, after the Bid Deadline, the Debtors will have no obligation to furnish or update any due diligence information.

For any party that the Debtors, in consultation with the Consultation Parties, determine to be a competitor of the Debtors or affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold or modify, or to delay providing, any due diligence information that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such party at such time.

C. Non-Binding Indications of Interest.

In order to be eligible to be selected as a Stalking Horse Bidder or to be eligible to submit a Bid (each as defined below), a party must submit a non-binding indication of interest (an “**Indication of Interest**”) in writing to the Debtor Notice Parties on such date that is the later of (x) June 5, 2019 or (y) one calendar day after the date on which the Court enters the Bidding Procedures Order (which deadline may be extended by the Debtors without notice or hearing before the Court); *provided, however*, that the Debtors reserve their right to waive the requirement for Eligible Bidders to submit an Indication of Interest for any party in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, without further order from the Court.

The Indication of Interest must: (i) identify the interested party, including details on the acquisition structure, ownership structure, as well as legal form and jurisdiction of the interested party; (ii) identify with reasonable specificity the Assets the party is interested in acquiring; (iii) set forth a proposed purchase price for the proposed Sale, including by identifying any cash and non-cash components of the proposed Sale consideration, including, for example, any liabilities to be assumed; (iv) provide detailed information regarding the proposed financing sources; (v) outline the remaining due diligence requirements; (vi) identify any proposed conditions to closing the Sale, including, but not limited to, required approvals; (vii) provide for the party’s ability to take transfer of the permits of the relevant mining operations; and (viii) provide evidence of such interested party’s financial capacity to close a proposed Sale, which may include financial statements of, or verified financial commitments obtained by, such party (with the assistance of their advisors).

The submission of an Indication of Interest by a party does not (i) obligate such party to submit a Bid or to participate in the sale process, or (ii) exempt such party from also having to submit a Bid by the Bid Deadline to participate in the Auction.

Selecting a Stalking Horse Bidder and Bid Protections

The Debtors may, at any time until two calendar days prior to the date of the Auction, as an exercise of their reasonable business judgment, in consultation with the Consultation Parties, select one or more parties that have submitted an Indication of Interest to act as a stalking horse bidder (the “**Stalking Horse Bidder**,” and the Bid of such Stalking Horse Bidder, the “**Stalking Horse Bid**”) with respect to some or all of the Debtors’ Assets and provide such Stalking Horse Bidder with the Bid Protections (as defined below).

In connection with any stalking horse agreement with a Stalking Horse Bidder and as approved by the Bid Procedures Order, the Debtors shall be authorized (but not obligated), in an exercise of their reasonable business judgment, in consultation with the Consultation Parties, to (i) provide a breakup fee and (ii) agree to reimburse the reasonable and documented out-of-pocket fees and expenses of such Stalking Horse Bidder (collectively, the “***Bid Protections***”), *provided* that any such Bid Protections shall be subject to approval by the Court, which the Debtors may seek on an expedited basis pursuant to section 105(a) of the Bankruptcy Code and Local Rule 9006-1(e).

Bidding and Auction Process

A. Bid Deadline.

Each party that timely submits an Indication of Interest shall be an “***Eligible Bidder***.” Any Eligible Bidder that desires to make a binding proposal, solicitation, or offer (each, a “***Bid***”) shall transmit the Bid to the Debtor Notice Parties so as to be **actually received** on or before July 8, 2019, at 5:00 p.m. (prevailing Eastern Time) (the “***Bid Deadline***”).

B. Bid Requirements.

All Bids must be submitted in writing and satisfy the following requirements (collectively, the “***Bid Requirements***”):

i. Purchase Price.

Each Bid must clearly set forth the purchase price to be paid, specifying (a) any cash and (b) any non-cash components, in sufficient detail satisfactory to the Debtors, in consultation with the Consultation Parties (the “***Purchase Price***”). Each Bid for a combination of Assets, other than for all or substantially all of the Assets, must: (x) provide a breakdown of the share of the Purchase Price allocable to each of the Assets included in the Bid; (y) state whether the Bid is conditioned upon the Bid being the Winning Bid (as defined below) for any of the other Assets included in the Bid (and, if so, which Assets); and (z) state whether the Eligible Bidder is willing to purchase any of the Assets included in the Bid individually, and if so, the price such Eligible Bidder would pay for each such Asset.

ii. Deposit.

Each Bid must be accompanied by a cash deposit in an amount equal to the greater of (a) 10% of the cash portion of the Purchase Price (i.e., the aggregate value of the cash and non-cash consideration) and (b) \$5,000,000.00 (the “***Deposit***”), to be submitted by wire transfer to an escrow account to be identified and established by the Debtors.

iii. Marked Asset Purchase Agreement.

Each Bid must include a draft asset purchase agreement substantially in the form of the Form of Asset Purchase Agreement annexed hereto as **Exhibit I**, or such other form as may be acceptable to the Debtors in consultation with the Consultation Parties (together with a redline version against the Form of Asset Purchase Agreement), including the exhibits and schedules

related thereto and any related documents or other material documents necessary to consummate the Sale contemplated by the Bid (collectively, the “*Sale Documents*”).

iv. Committed Financing.

Each Bid must contain evidence of the Eligible Bidder’s ability to consummate a Sale within 60 calendar days of such Bid being declared the Winning Bid. To the extent that a Bid is not accompanied by evidence of such party’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing, documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that such party has received sufficient debt and/or equity funding commitments to satisfy the Bid’s Purchase Price and other obligations thereunder. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors, in consultation with the Consultation Parties.

v. No Financing or Diligence Outs.

A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions.

vi. Identity.

Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Eligible Bidder if such Eligible Bidder is an entity formed for the purpose of consummating the proposed Sale contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom the Debtors’ advisors should contact regarding such Bid.

vii. Authorization.

Each Bid must contain evidence that the Eligible Bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Sale contemplated in such Bid.

viii. Adequate Assurance of Future Performance.

Each Bid must: (a) identify any executory contracts and unexpired leases to be assumed and assigned in connection with such Bid; (b) provide for the payment by the Eligible Bidder of all cure costs related to such executory contracts and unexpired leases; and (c) demonstrate, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, that the Eligible Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.

ix. Government Approvals.

Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed Sale, together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, obtaining any such consents or approvals.

x. Government Approvals Timeframe.

Each Bid must set forth an estimated timeframe for obtaining any required governmental, licensing, regulatory, or other approvals or consents for consummating any proposed Sale.

xi. Transfer of Mining Permits/Assumption of Reclamation Obligations.

Each Bid, including the APA and, if applicable, any related asset purchase agreement, must (a) provide that the Eligible Bidder will: (i) take transfer of or obtain permits for the mining operations to be acquired, (ii) assume all associated reclamation obligations with respect to the mines subject to the Bid, and (iii) replace the reclamation surety bonds associated with such permits; and (b) provide evidence of: (i) the Eligible Bidder's ability to satisfy the conditions set forth in clause (a) of this paragraph (including verification that the Eligible Bidder is not, and will not be as of the time of the transfer, "permit blocked" under the federal Surface Mining Control and Reclamation Act by application of the federal Applicant Violator System), and (ii) the Eligible Bidder's financial resources necessary to replace the reclamation surety bonds associated with such permits, which evidence may include a letter from a surety company confirming that such surety is willing to issue replacement bonds on behalf of the Eligible Bidder. The Debtors shall also provide such evidence submitted (subject to any applicable confidentiality agreements that may be entered into) to the Sureties on the bonds for the relevant mine(s) to be acquired, and the Debtors shall consult with such Sureties with respect to such Eligible Bidder's ability to obtain or take transfer of the permits and replace surety bonds, each as required by the applicable regulators. To the extent not already provided to the Sureties in the ordinary course of business, the Debtors shall provide the Sureties with a list of the mines to be acquired by permit number and related surety bond, and the Debtors' good faith estimate of the environmental reclamation obligations relative to such permits and related mines.

xii. As-Is, Where-Is.

Each Bid must include a written acknowledgement and representation that the Eligible Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction.

xiii. Honoring the Bid Procedures.

Each Bid must affirmatively state agreement, and by submitting its Bid, each Eligible Bidder is so agreeing, to abide by and honor the terms of these Bidding Procedures (including if such Bid is declared the Winning Bidder or Backup Bidder (as defined below)) and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

xiv. Additional Diligence.

Each Eligible Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding the Bid.

xv. Expenses.

Each Bid, except for a potential Stalking Horse Bid (as defined above), shall not contemplate or request (and no Eligible Bidder that is not a Stalking Horse Bidder shall receive) any break-up fee, transaction fee, termination fee, expense reimbursement, or any similar type of payment or reimbursement, and by submitting its Bid, each Eligible Bidder is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

C. Information to be Provided to the Ad Hoc Group and Consultation Parties.

Promptly upon any party executing a Confidentiality Agreement, but in any event no later than three business days, the Debtors will notify the counsel to the Ad Hoc Group of such occurrence.

Promptly upon any party submitting an Indication of Interest, but in any event no later than three business days, the Debtors will notify the Consultation Parties and counsel to PNC Bank of such occurrence.

Promptly upon receiving each Bid, but in no event later than one business day following the Bid Deadline, the Debtors will provide a copy of each Bid to the Consultation Parties and counsel to PNC Bank, *provided* that any confidential information shall only be shared with the Consultation Parties and counsel to PNC Bank on a professional-eyes'-only basis, *provided, further*, that once a credit bid is submitted by a party, the Debtors shall not consult with the party submitting such credit bid party in connection with any issue related to the sale of the portion of the assets that is subject to such credit bid (including whether such bid is the highest or otherwise best offer), unless and until such party revokes such credit bid.

D. Designation of Qualified Bidders.

i. Qualified Bidder.

A Bid will be considered a “**Qualified Bid**,” and each Eligible Bidder that submits a Qualified Bid will be considered a “**Qualified Bidder**,” if the Debtors determine in their reasonable business judgment, in consultation with the Consultation Parties, that such Bid: (a) satisfies the Bid Requirements; and (b) is reasonably likely (based on availability of financing, antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the

Winning Bid, within a time-frame reasonably acceptable to the Debtors, in consultation with the Consultation Parties.

Notwithstanding anything to the contrary herein, any timely Bid: (x) submitted by or on behalf of the Ad Hoc Group shall be considered a Qualified Bid, and any such bidder shall be considered a Qualified Bidder, and (y) that contemplates the consummation of a proposed Sale through a plan of reorganization will be deemed a Qualified Bid, and any such bidder shall be considered a Qualified Bidder, if it otherwise complies with the requirements set forth herein.

ii. Notification.

Within two business days after the Bid Deadline, the Debtors will notify each Eligible Bidder whether such party is a Qualified Bidder.

iii. Bid Modifications.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction: (a) the Debtors, in consultation with the Consultation Parties, may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder; and (b) a Qualified Bidder may not, without the prior written consent of the Debtors (which shall consult with the with the Consultation Parties before granting such consent), modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of, the Qualified Bid, *provided* that any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

iv. Combination of Bids; Overlapping Bids.

Notwithstanding anything herein to the contrary, the Debtors reserve the right, in consultation with the Consultation Parties, to work with: (a) Eligible Bidders and Qualified Bidders to aggregate two or more Indications of Interest or Bids into a single consolidated Bid prior to the Bid Deadline; (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction; and (c) any Eligible Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors, in consultation with the Consultation Parties, may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Assets such that, if taken together in the aggregate, the Bids would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder for purposes of the Auction).

E. Bid Selection and Criterion.

i. Baseline Bid.

No later than one business day before the Auction, the Debtors will notify all Qualified Bidders of: (a) the highest or otherwise best Qualified Bid with respect to all or substantially all of the Debtors' Assets ("*All Assets*"); or (b) if, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, separating the Assets into more than one potential sale is in the best interest of their estates, the highest or otherwise best Qualified Bid with respect to

each such delineation of assets (each, an “**Asset Package**”). Each such highest or otherwise best Qualified Bid, which Qualified Bid may be a Stalking Horse Bid, shall be the “**Baseline Bid**” and the Debtors shall provide copies of the documents supporting each Baseline Bid to all Qualified Bidders.

ii. Bid Assessment Criteria.

The determination of which Qualified Bid constitutes the Baseline Bid and, ultimately, the Winning Bid shall take into account any factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the Debtors’ estates, including, among other things: (a) the type and amount of Assets sought to be purchased; (b) the amount and nature of the Purchase Price; (c) the Qualified Bidder’s ability to consummate a Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors’ estates from the Qualified Bid; (e) the effect on the Debtors’ ability to wind down their estates in accordance with applicable law; and (f) the tax consequences of such Qualified Bid.

iii. Credit Bids.

Any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors’ estates and the right under applicable non-bankruptcy law to credit bid claims secured by such liens shall have the right to credit bid any portion and up to the entire amount of their outstanding secured claims pursuant to section 363(k) of the Bankruptcy Code, *provided* that any credit bid by or on behalf of any party other than the DIP Lenders, shall contain a cash component sufficient to pay the principal amount outstanding plus accrued but unpaid interest and fees under the Debtors’ proposed debtor-in-possession financing facility.

For purposes of evaluating competing bids, every dollar of a credit bid shall be treated the same as a dollar from a cash bid, and a credit bid shall not be considered inferior to a comparable cash bid because it is a credit bid. The fact that a Bid is composed of a credit bid (whether in whole or in part) shall not be a factor considered by the Debtors in their determination of the highest or otherwise best Bid for such asset.

F. Auction Procedure.

i. Time and Place.

If the Debtors receive two or more Qualified Bids with respect to All Assets or the same or similar Asset Package, as applicable, then the Debtors will conduct the Auction to determine the Winning Bidder(s) (as defined below) with respect to such Assets. The Auction shall take place at 11:00 a.m. (prevailing Eastern Time) on July 11, 2019 at Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York, 10019, or such later date, time, and location, as selected by the Debtors, in consultation with the Consultation Parties. If the Debtors receive one Qualified Bid with respect to All Assets or the same or similar Asset Package, as applicable, then the Debtors, in consultation with the Consultation Parties, may select such Qualified Bid as the Winning Bid and notify all other Bidders promptly thereafter.

ii. Conducting the Auction.

The Debtors and their advisors shall direct and preside over the Auction, *provided* that the Debtors shall consult with the Consultation Parties during the Auction to the extent reasonably practicable. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s) and, if applicable, the Asset Packages. Any Bids made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid(s) shall be "**Overbids**" and must comply with the conditions set forth below and shall be made and received on an open basis, with all material terms of each Overbid fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, and the Winning Bid(s). The Debtors may, in consultation with the Consultation Parties, *provided* that if the Ad Hoc Group is participating in the Auction as a Qualified Bidder then they shall not receive such consultation, (a) select, in their reasonable business judgment, pursuant to these Bidding Procedures, the highest or otherwise best Bid and the Winning Bidder(s) or Backup Bidder(s); and (b) reject any Bid (regardless of whether such Bid is a Qualified Bid) that, in the Debtors' reasonable business judgment, is (x) inadequate, insufficient, or not the highest or best Bid, (y) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, or these Bidding Procedures, or (z) contrary to, or otherwise not in the best interests of the Debtors' estates, affected stakeholders, or other parties in interest.

iii. *Terms of Overbids.*

1. Minimum Initial Overbid: Any initial Overbid to the Baseline Bid(s) shall be no less than the value of the Baseline Bid(s)'s Purchase Price of the Assets, plus \$250,000 plus the amount of the Bid Protections, if any.
2. Minimum Overbid Increments: Any subsequent Overbids shall be in increments of value equal to \$250,000, as determined by the Debtors in an exercise of their reasonable business judgment.
3. Announcing Highest Bid: After each Overbid, the Debtors shall announce the material terms of the Overbid, including value attributed to the Overbid.

iv. *Eligibility.*

Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures; *provided* that such other limitations are (a) not inconsistent with the Bidding Procedures Order, any other order of the Bankruptcy Court, or the Bankruptcy Code, (b) disclosed orally or in writing to all Qualified Bidders and (c) determined by the Debtors, in consultation with the Consultation Parties, to further the goals of these Bidding Procedures.

v. *Required Attendance.*

Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative.

vi. *Permitted Attendance.*

The Auction will be conducted openly and all creditors and counsel or other professional advisors to the Consultation Parties may be permitted to attend, *provided* that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit to the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder or creditor at the Auction.

vii. No Collusion; Good-Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that: (a) it has not engaged in any collusion with respect to the bidding; and (b) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed Sale if selected as the Winning Bidder.

viii. Adjourning the Auction.

Notwithstanding anything else herein to the contrary, the Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things: (a) facilitate discussions between the Debtors and Qualified Bidders; (b) allow Qualified Bidders to consider how they wish to proceed; (c) alter or combine Asset Packages; and (d) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale at the prevailing Overbid amount.

ix. Closing the Auction.

The Auction shall continue until the Debtors select, in their reasonable business judgment, in consultation with the Consultation Parties, pursuant to these Bidding Procedures, the highest or otherwise best Qualified Bid for All Assets or each of the Asset Packages, as applicable. Such Qualified Bid shall be declared the “**Winning Bid**,” and such Qualified Bidder, the “**Winning Bidder**,” and at which point the Auction will be closed. The Debtors may also select, in their reasonable business judgment, in consultation with the Consultation Parties, pursuant to these Bidding Procedures, the next-highest or otherwise second-best Qualified Bid for All Assets or each Asset Package, as applicable, to be the “**Backup Bidder**.” As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, and, as applicable, cause such definitive documentation to be filed with the Court. The acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid.

Upon the selection of the Winning Bidder, to the extent that the Debtors and a Winning Bidder determine that the closing of the Sale to the Winning Bidder may occur prior to the transfer of any of the Debtors’ existing mining permits that are being transferred to such Winning Bidder, the Debtors and the Winning Bidder will consult with the Debtors’ Sureties on the bonds for the relevant mine(s) being acquired by such Winning Bidder regarding entering into an agreement that would allow the Winning Bidder to conduct business at such mine(s) under the Debtors’ existing mining permits, pending the transfer of the relevant mining permits to the Winning Bidder. The

Sureties have indicated that they will require each such Winning Bidder to enter into an agreement with the applicable Surety, which agreements shall provide, among other things, that the Winning Bidder (a) is liable for correcting any violations or defaults relating to the mine(s) with the pending permit transfers, (b) indemnifies the Debtors and the applicable Sureties in the event of any default, claim, or loss that occurs at the mine(s) with the pending permit transfers, and (c) agrees to such other terms and provisions as may be required by such Sureties and such Winning Bidder in their discretion, including, without limitation, terms requiring the Winning Bidder to post collateral for such Sureties' bonds relating to such permits pending transfer; provided, that nothing in this paragraph alters any legal requirements under applicable police and regulatory law. Nothing herein shall be deemed to require any party to enter into any such agreement or any Surety to consent to any operations under a permit relating to any surety bond.

x. *Backup Bidder.*

1. Designation of Backup Bidder: If an Auction is conducted, then the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for All Assets or each Asset Package, as applicable, as determined by the Debtors in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, shall be required to serve as a backup bidder (the "***Backup Bidder***") until such time as the applicable Sale is consummated, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
2. Identity of Backup Bidder: The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Winning Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until such time as the Sale is consummated.
3. Consummating a Sale with Backup Bidder: If a Winning Bidder fails to consummate the approved Sale contemplated by its Winning Bid, then the Debtors may select the Backup Bidder as the Winning Bidder, and such Backup Bidder shall be deemed a Winning Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party.

xi. *Return of Deposit.*

The Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Winning Bidder and the Backup Bidder) within three business days after the Auction is closed, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any interest that will have accrued thereon.

The Deposit of the Winning Bidder shall be applied to the purchase price of such Sale at

closing. If a Winning Bidder (including a Backup Bidder which becomes a Winning Bidder) fails to consummate a proposed transaction because of a breach by such Winning Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Winning Bidder, which may be retained by the Debtors as liquidated damages, in addition to any rights, remedies, or causes of action that may be available to the Debtors. If a Winning Bidder consummates a proposed transaction or fails to consummate a proposed transaction but the Debtors elect to not consummate the proposed transaction with the Backup Bidder, then the Backup Bidder's Deposit shall be returned within three business days thereof, or as soon as is reasonably practicable thereafter.

xii. Modification of Bidding Procedures.

The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law and in consultation with the Consultation Parties, without further order from the Court, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Sale, including, without limitation: (a) extending or modifying any of the dates and deadlines set forth in these Bidding Procedures; (b) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (c) adjusting the applicable minimum Overbid increment, including by requesting that Qualified Bidders submit last or final bids on a "blind" basis; (d) adjourning or canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids, *provided* that the Debtors may not amend these Bidding Procedures to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court.

xiii. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor, to take any action or to refrain from taking any action to the extent taking or failing to take such action would be inconsistent with applicable law or its fiduciary obligations under applicable law.

xiv. Consent to Jurisdiction.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bidding Procedures.

Dated: [•]
Wilmington, Delaware

/s/ [•]

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EXHIBIT I TO BIDDING PROCEDURES

FORM OF ASSET PURCHASE AGREEMENT

DISCLAIMER: Unless and until each Party's authorized representative (having the express authority to bind such Party) executes a definitive agreement, no Party shall have any obligation (legal or otherwise) to conclude a transaction. Unless included in a definitive agreement, communications (written or oral) shall not create any obligations whatsoever with respect to Seller and any Person reviewing this draft Agreement. No Person may rely on any communications (whether written or oral) or this draft Agreement as the basis for taking any action, foregoing any action or opportunity or incurring any costs. Each Party reserves the right to reject any or all proposals for any reason whatsoever and to accept any one or more proposals, and to negotiate such proposals in any manner such Party deems appropriate.

FORM OF
ASSET PURCHASE AGREEMENT
among
[PURCHASER],
CLOUD PEAK ENERGY INC.,
and
CERTAIN SUBSIDIARIES OF CLOUD PEAK ENERGY INC.

Dated as of [●], 2019

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EXHIBITS

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Permits
Purchase Price Allocation

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of [●], 2019 (the “**Execution Date**”), by and among [Purchaser], a [●] (“**Purchaser**”), Cloud Peak Energy Inc., a Delaware corporation (the “**Company**”), and the Additional Sellers (as defined below) (together with the Company, the “**Sellers**” and each entity individually a “**Seller**”).

RECITALS:

A. The Sellers directly and indirectly mine, process, market and sell coal from certain mining complexes located [in the states of Montana and Wyoming (the “**Business**”), as set forth on the map attached hereto as Schedule A.]

B. The Sellers desire to sell to Purchaser the Purchased Assets and to assign to Purchaser the Assumed Liabilities, and Purchaser desires to purchase from the Sellers the Purchased Assets and to assume from the Sellers the Assumed Liabilities, in each case upon the terms and conditions set forth in this Agreement (such purchase, sale, assignment and assumption collectively, the “**Sale**”).

C. The Parties intend to consummate the Sale through and as part of cases filed under title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**” and such cases, the “**Chapter 11 Cases**”) on [_____] (the “**Petition Date**”).

D. Subject to the terms and conditions set forth herein, Purchaser has agreed to purchase, and the Sellers have agreed to sell, the Purchased Assets in accordance with sections 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

1.1 **Certain Definitions.** For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

“**365 Contracts**” means all of the Sellers’ executory Contracts included in the Purchased Assets.

“**Additional Sellers**” means those Persons identified on Schedule 1.1(a).

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the Preamble.

“**Antitrust Division**” has the meaning set forth in Section 8.4(a).

“**Antitrust Laws**” has the meaning set forth in Section 8.4(b).

“**Antitrust Order**” has the meaning set forth in Section 8.4(b).

“**Applicant Violator System**” has the meaning set forth in Section 5.12.

“**Assumed Cure Costs**” means, with respect to any Purchased Contract, the Cure Costs, if any, for such Purchased Contract.

“**Assumed Liabilities**” has the meaning set forth in Section 2.3.

“**Assumed Payables**” has the meaning set forth in Section 2.3(f).

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Bidding Procedures**” means bid procedures in substantially the form attached hereto as Exhibit [●], as the same may be modified and then approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

“**Bidding Procedures Order**” means an Order of the Bankruptcy Court approving, among other things, the Bidding Procedures for conducting an auction, if any, for the sale of assets, including the Purchased Assets, and the assumption of liabilities, including the Assumed Liabilities, and the assumption and assignment of contracts, including the Purchased Contracts.

“**Business**” has the meaning set forth in the Recitals.

“**Business Day**” means any day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York are authorized or required by Law to close.

“**Chapter 11 Cases**” has the meaning set forth in the Recitals.

“**Closing**” has the meaning set forth in Section 4.1.

“**Closing Date**” has the meaning set forth in Section 4.1.

“**Code**” means the Internal Revenue Code of 1986.

“**Company**” has the meaning set forth in the Preamble.

“**Confidentiality Agreement**” has the meaning set forth in Section 8.9.

“Contract” means any contract, agreement, commitment, understanding, arrangement, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, lease, instrument, license, lease, purchase order or other legally binding agreement).

“Contracts Assignment and Assumption Agreements” means the Contracts Assignment and Assumption Agreements for the assumed Contracts, in substantially the form attached hereto as Exhibit A.

“Cure Costs” means monetary amounts that must be paid and obligations that otherwise must be satisfied under sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of any Purchased Contract, as agreed upon by the Parties or determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order.

“Deposit Amount” has the meaning set forth in Section 3.2.

“Designated Purchaser” has the meaning set forth in Section 11.10.

“Documents” means all books, records, files, invoices, inventory records, product specifications, cost and pricing information, business plans and quality control records and manuals, in each case, that primarily relate to any Purchased Asset, including all data and other information stored in any format or media, including on hard drives, hard copy or other media.

“Environmental Law” means any Law relating to (a) the pollution, protection or restoration of the environment, (b) any spill, emission, release or disposal into the environment of, or human exposure to, any pollutant, contaminant or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material, or (c) acid mine drainage, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq; Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., and any applicable tribal, state or local law counterparts, as the same may be reauthorized or amended from time to time.

“Equipment and Fixed Assets” has the meaning set forth in Section 2.1(b)(iii).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Execution Date” has the meaning set forth in the Preamble.

“Fraud” means a knowing and intentional misrepresentation of a material fact or concealment of a material fact by a Party with respect to any representation or warranty by a Party in Article V or Article VI, or in any certificate delivered pursuant to this Agreement (but not, for the avoidance of doubt, in any other actual or alleged representation or warranty made orally or in writing), which is made or concealed with the intent of inducing another Party to enter into this Agreement and upon which such other Party has reasonably relied (and does not include any fraud claim based on constructive knowledge, negligent misrepresentation, recklessness or a similar theory).

“FTC” has the meaning set forth in Section 8.4(a).

“GAAP” means generally accepted accounting principles in the United States.

“General Assignments and Bills of Sales” means the General Assignments and Bills of Sales for the Purchased Assets, in substantially the form attached hereto as Exhibit B.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a), as amended.

“Income Taxes” means (a) all Taxes based upon, measured by, or calculated with respect to gross or net income, gross or net receipts or profits (including franchise Taxes and any capital gains, alternative minimum, and net worth Taxes, but excluding ad valorem, property, excise, severance, production, sales, use, real or personal property transfer or other similar Taxes), (b) Taxes based upon, measured by, or calculated with respect to multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based, measured by, or calculated with respect to is included in clause (a) above, or (c) withholding Taxes measured with reference to or as a substitute for any Tax included in clauses (a) or (b) above.

“Indemnified Guarantees” has the meaning set forth in Section 8.6(b).

“Intellectual Property Right” means any Trademark, mask work, invention, patent, trade secret or other right in any proprietary business information (including data bases and data collections, pricing and cost information, business and marketing plans, and customer and supplier lists), copyright, right of publicity, know-how (including manufacturing and production processes and techniques, and research and development information), or any other intellectual property or similar proprietary industrial right of any kind or nature anywhere in the world (including any such rights in software), and including (a) any issuances, registrations or applications for registration of any of the foregoing, (b) all goodwill associated with any of the foregoing, and (c) all rights to sue

or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing.

"Interest Rate" means a rate per annum equal to the one (1)-month LIBOR (as published by the ICE Benchmark Administration, or, if not published thereby, in another authoritative source selected by Seller and Purchaser), on the date that the applicable payment was required to be paid (or if no quotation for the one (1)-month LIBOR is available for such date, on the next preceding date for which such quotation is available) *plus* 500 basis points.

"Interim Period" has the meaning set forth in Section 8.6(d).

"IRS" means the Internal Revenue Service.

"Knowledge of the Sellers" or **"the Sellers' Knowledge"** means the actual knowledge, of those officers of the Sellers identified on Schedule 1.1(b).

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree or common law requirement.

"Lease Assignment and Assumption Agreements" means the Lease Assignment and Assumption Agreements for the assumed Leases and Purchased Leased Real Property, in substantially the form attached hereto as Exhibit C.

"Leased Real Property" means all real property and other related rights leased or subleased by any Seller pursuant to a Lease.

"Leases" means the real property leases and subleases listed on Schedule 1.1(c), together with the rights to any and all underground and surface coal reserves, natural gas reserves, mineral rights, mining rights, surface rights, rights of way, easements, fixtures and improvements set forth in such leases and subleases.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

"Liability" means any debt, loss, liability, claim (including "claim" as defined in the Bankruptcy Code), commitment, demand, responsibility, suit, judgment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, disclosed or undisclosed, express or implied, primary or secondary, direct or indirect, matured or unmatured, determined or indeterminable, disputed or undisputed, secured or unsecured, joint or several, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, and whether in contract, tort or otherwise, and whether or not required to be accrued on the financial statements of any entity or individual.

"Licenses" means the licenses, qualifications, franchises, certificates, consents, authorizations, approvals, Orders, and concessions primarily used or held for use by the Sellers in connection with the operation of the Business, and all pending applications for additional licenses,

renewals of existing licenses, or amendments to existing licenses which have been submitted to any Governmental Body by any Seller necessary for the operation of the Business.

“Lien” as applied to any Person means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, sublease, charge, option, right of first offer or first refusal, right of use or possession, restriction, easement, servitude, restrictive covenant, encroachment or any other similar encumbrance or restriction in respect of an asset of such Person, whether imposed by Law, Contract or otherwise.

“Mining” means the exploration, extraction, processing, storage and transportation of coal and non-coal minerals and the Reclamation of lands used for such activities.

“Mining and Mining Safety Law” means all Laws relating to Mining and Mining safety, including (a) SMCRA (including its implementing regulations and any state analogs); (b) MSHA; (c) acid and toxic mine drainage requirements; and (d) regulations relating to Mining operations and activities, including Reclamation.

“MSHA” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et. seq.

“Necessary Consent” has the meaning set forth in Section 2.6(a).

“Non-Income Taxes” means ad valorem, property, excise, sales, use or other Taxes based upon the acquisition, operation or ownership of the Purchased Assets, but excluding, for the avoidance of doubt, Income Taxes and Transfer Taxes.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of, or entered, issued, made or rendered by, a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business.

“Outside Date” has the meaning set forth in Section 4.4(a).

“Owned Real Property” means all real property owned by any Seller that is listed on Schedule 1.1(c), together with all of such Seller’s right, title and interest in and to the following, as it relates to the real property so listed and as used or held for use primarily in the operation of the Business: (a) all buildings, structures and improvements located on such real property owned by such Seller, (b) all improvements, fixtures, mine infrastructure, preparation plant structures and improvements, loadout structures and improvements, rail sidings, or apparatus affixed to such real property owned by such Seller, (c) all rights of way or easements, if any, in or upon or appurtenant to such real property owned by such Seller and all other rights and appurtenances belonging or in any way pertaining to such real property owned by such Seller (including the right, title and interest of such Seller or an Affiliate in and to any coal reserves, mineral rights, underground and surface coal and mining rights, royalty rights, support rights and waivers, subsidence rights or water rights relating or appurtenant to such real property owned by such Seller), and (d) all strips and gores and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining such real property owned by such Seller.

“Party” or **“Parties”** means Purchaser and each Seller, as the case may be.

“Permits” means the mining permits, drilling permits and other permits held by the Sellers which, in each case, primarily relate to the operation of the Business and Purchased Assets, and all pending applications for additional permits, renewals of existing permits or amendments to existing permits which have been submitted to any Governmental Body by any Seller necessary for the operation of the Business.

“Permitted Exceptions” means (a) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance that have been made available to Purchaser, (b) statutory Liens for Taxes not yet due and payable or, if delinquent, that are being contested in good faith by appropriate proceedings, (c) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated, (d) mechanics’, carriers’, workers’, repairers’, warehousemen’s and similar Liens arising or incurred in the Ordinary Course of Business, (e) title of a lessor under a capital or operating lease if such lease is a Purchased Contract, (f) easements, covenants, conditions, restrictions and other similar encumbrances on real property that do not materially detract from the value of the affected Purchased Real Property and do not materially interfere with the present or intended use of such Purchased Real Property, (g) the leasehold estate or any sublease, license or rights of occupancy in any Owned Real Property where a Seller is lessor, (h) any other imperfections in title, charges, easements, restrictions, licenses and encumbrances that do not materially affect the use or transferability of the affected asset or property, (i) local, county, state and federal Laws, ordinances or governmental regulations including Environmental Laws and regulations, local building and fire codes, and zoning, conservation or other land use regulations now or hereafter in effect relating to any Purchased Real Property, and (j) Liens that will be released by the Sale Order.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Petition Date” has the meaning set forth in the Recitals.

“Pre-Paid Expenses” means any of the Sellers’ rights with respect to all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, pre-paid expenses, prepayments, rights under warranties or guarantees, vendor rebates and other refunds of every kind and nature (whether or not known or unknown or contingent or non-contingent), to the extent primarily related to the Business, except that professional fee retainers, Taxes and, in each case, pre-paid deposits related thereto shall not be included in the definition of **“Pre-Paid Expenses.”**

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Assets” has the meaning set forth in Section 2.1(b).

“Purchased Contracts” has the meaning set forth in Section 2.1(b)(v).

“Purchased Inventory” has the meaning set forth in Section 2.1(b)(iv).

“Purchased Leased Real Property” has the meaning set forth in Section 2.1(b)(ii).

“Purchased Pre-Paid Expenses” has the meaning set forth in Section 2.1(b)(xiv).

“Purchased Real Property” means the Owned Real Property and the Leased Real Property.

“Purchased Receivables” has the meaning set forth in Section 2.1(b)(xv).

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material and adverse effect on the ability of Purchaser to consummate the Transactions or perform its obligations under this Agreement.

“Reclamation” means reclamation, revegetation, recontouring, abatement, control or prevention of adverse effects of mining activities.

“Representative” means, with respect to any Person, any and all directors, officers, partners, managers, employees, consultants, financial advisors, counsel, accountants and other agents.

“Required Bonding” means the applicable reclamation bonds, letters of credit or other sources of collateral or financial assurance required for each Transferred Permit/License sufficient to replace all Sellers Bonds.

“Sale” has the meaning set forth in the Recitals.

“Sale Order” means an Order in form and substance reasonably satisfactory to Purchaser and the Sellers entered by the Bankruptcy Court or other court of competent jurisdiction (a) that is not subject to a stay pending appeal, and (b) that provides, at least, the following: (i) the Purchased Assets will be transferred to Purchaser free and clear of all Liens and all Liabilities of any kind or nature whatsoever, whether at law or in equity, including free and clear of any rights or claims based on theories of transferee or successor liability under any applicable Law, whether arising before or after the commencement of the Chapter 11 Cases, save and excepting only those Liabilities expressly assumed by Purchaser in writing under this Agreement and Transferred Exceptions, (ii) containing findings of fact and conclusions of law that Purchaser has acted in “good faith” within the meaning of and is entitled to the protections of section 363(m) of the Bankruptcy Code, and that this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm’s length bargaining positions, and (iii) this Agreement and the Transactions may, subject to the terms set forth herein, be specifically enforced against and binding upon, and not subject to rejection or avoidance by any Seller or their respective estates or any chapter 7 or chapter 11 trustee of the Sellers or any other Representative of their respective estates.

“SEC” means the Securities and Exchange Commission.

“Seller” has the meaning set forth in the Preamble.

“Seller Bonds” has the meaning set forth in Section 8.6(b).

“Seller Marks” has the meaning set forth in Section 8.11.

“Seller Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, effects, conditions, states of facts or occurrences, a material adverse effect on (x) the Purchased Assets, considered as a whole, or (y) the Sellers’ (A) performance of their obligations under this Agreement and each other agreement, document or instrument contemplated hereby to which a Seller is a party or (B) ability to consummate the transactions contemplated hereby or thereby, in each case, other than, any event, change, effect, condition, state of facts or occurrence resulting from (a) any change in the United States or foreign economies or financial markets in general, (b) any change that generally affects the mining, processing, marketing, sale or use of coal or other carbon based sources of energy or power, (c) any change arising in connection with acts of God (including earthquakes, storms, severe weather, fires, floods and natural catastrophes), hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions (in each case including cyberterrorism), (d) any change in applicable Laws or accounting rules, (e) any change or effect arising in connection with the shutdown or other cessation of operations of any Governmental Body, (f) any actions taken or proposed to be taken by Purchaser or any of its Affiliates, other than those expressly permitted in accordance with the terms of this Agreement, (g) any action taken by Seller or any Affiliate of Seller with Purchaser’s written consent or that are otherwise prescribed or expressly permitted hereunder, (h) any effect resulting from the public announcement of this Agreement or the Chapter 11 Cases, (i) the sale or announcement of plans for a sale by any Seller or any of its Affiliates of Excluded Assets to a third party, (j) any labor organizing efforts, strikes, or other employee-related disruption of operations in the Business, (k) any effect resulting from the commencement or prosecution of the Chapter 11 Cases or any Seller’s inability to pay certain obligations as a result of the commencement or prosecution of the Chapter 11 Cases, (l) any failure of the Business or any Seller to meet any projections or forecasts for any period, (m) general or technological changes in the industries in which the Sellers compete, and (n) any effect resulting from a breach of this Agreement by Purchaser; provided, however, that with respect to clauses (a), (b) and (d), such effects shall not be excluded from the definition of “Seller Material Adverse Effect” to the extent it has, or would reasonably be expected to have, a materially disproportionate adverse effect on the Business, taken as a whole, as compared to other similarly situated businesses.

“SMCRA” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201 et. seq.

“Specific Representation” has the meaning set forth in Section 11.14.

“Straddle Period” means any Taxable period beginning prior to and ending on or after the Closing Date.

“Subsidiary” means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes (including any related or supporting schedule, attachment thereto or amendment thereof).

“Taxes” means (a) all taxes, assessments, duties, levies, imposts or other similar charges in the nature of a tax imposed by a Governmental Body, including all income, franchise, profits, capital gains, capital stock, gross receipts, sales, use, transfer, service, occupation, ad valorem, property, excise, production, severance, windfall profit, premium, stamp, license, payroll, employment, social security, unemployment, disability, environmental (including taxes under Code Section 59A), alternative minimum, add-on, value-added, withholding (including backup withholding) and estimated taxes, and (b) any interest, fine, penalty or additions to tax imposed by a Governmental Body in connection with any item described in clause (a) above.

“Trade Payables” means (a) trade obligations, (b) accrued payroll, (c) accrued vacation, (d) accrued accounts payable, (e) royalties payable and (f) accrued operating expenses, in each case incurred by the Sellers prior to the Closing (and including accruals therefor), to the extent that such obligations relate to the Purchased Assets, Assumed Liabilities or the Business.

“Trademarks” has the meaning set forth in Section 8.11.

“Transactions” means the transactions contemplated by this Agreement.

“Transfer Taxes” has the meaning set forth in Section 10.1.

“Transferred Exceptions” means title of a lessor under a capital or operating lease if such lease is a Purchased Contract.

“Transferred Permits/Licenses” has the meaning set forth in Section 2.1(b)(vi).

“WARN Act” shall mean the United States Worker Adjustment and Retraining Notification Act, as amended, and similar state Laws.

“Willful Breach” means, with respect to any Party, that such Party willfully takes an action prohibited by this Agreement or refuses to perform or take an action required by this Agreement, in each case with the knowledge that such action or refusal to act, as applicable, would cause or result in the breach of any material pre-Closing covenant or agreement applicable to such Party. In addition, if all of the conditions in Article IX have been satisfied or waived (other than those conditions that by their nature are to be satisfied by actions taken at the Closing) and any Party fails to consummate the Transactions within five Business Days following the date the Closing should have occurred pursuant to Section 4.1, then such Party that fails to consummate the Transactions shall be deemed to be in Willful Breach of this Agreement.

1.2 **Other Definitional and Interpretive Matters.**

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation will apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms.

Dollars. Any reference in this Agreement to \$ will mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

GAAP. Terms used herein which are defined in GAAP are, unless specifically defined herein, used herein as defined in GAAP.

Gender and Number. Any reference in this Agreement to gender will include all genders, and words imparting the singular number only will include the plural and vice versa.

Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital, Exhibit or Schedule are to the corresponding Article, Section, Recital, Exhibit or Schedule of or to this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

Or. The word “or” is not exclusive.

Parties. References to any “Party” shall refer to Purchaser and each Seller, and references to the “Parties” shall refer to Purchaser and the Sellers collectively; provided, that, if the context requires, references to “Party” and “Parties” may be interpreted to refer to Purchaser, on the one hand, and the Sellers collectively, on the other hand.

To the Extent. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends, and such phrase shall not mean simply “if”.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets.

(a) Subject to the entry of the Sale Order, on the terms and subject to the conditions set forth in this Agreement and the Sale Order, at the Closing, Purchaser will purchase, acquire and accept from the applicable Seller, and each applicable Seller will sell, transfer, assign, convey and deliver to Purchaser, all of such Seller’s right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Permitted Exceptions).

(b) The term “Purchased Assets” means all of the following properties, assets and rights of any Seller, in each case to the extent primarily used or held for use in the conduct of the Business, existing as of the Closing:

(i) all Owned Real Property;

(ii) the Leases and the Leased Real Property (and any agreements and rights related thereto or under the applicable Lease to the extent that such agreement or Lease is a Purchased Contract) (collectively, to the extent primarily used or held for use in the conduct of the Business, the “Purchased Leased Real Property”);

(iii) all equipment, fixed assets and tangible assets (including all mobile mining equipment and components thereof), whether situated on the Purchased Real Property or elsewhere, and all of the Sellers’ rights under warranties, indemnities, licenses and all similar rights against third parties with respect to the equipment, fixed assets and tangible assets referenced in this clause (iii) (to the extent such rights are assignable at no cost, expense or penalty to the Sellers or their Affiliates, or at Purchaser’s election if Purchaser agrees to pay for such cost, expense or penalty) (collectively, to the extent primarily used or held for use in the conduct of the Business, the “Equipment and Fixed Assets”);

(iv) all coal inventory located on (or, to the extent in the possession of the Sellers at the Closing, mined or extracted from) the Purchased Real Property or all coal

in transit to the extent title or ownership has not been transferred to the applicable customer, together with all parts and supplies (collectively, to the extent primarily used or held for use in the conduct of the Business, the “**Purchased Inventory**”);

(v) the Contracts listed on Schedule 2.1(b)(v) that are unexpired as of the Closing Date (collectively, to the extent primarily used or held for use in the conduct of the Business, the “**Purchased Contracts**”), in each case as each such Contract may have been amended or otherwise modified prior to the date of (or as permitted in accordance with the terms of) this Agreement;

(vi) the material Permits and the Licenses, in each case, set forth on Schedule 2.1(b)(vi) and all other Permits and Licenses held by any Seller (collectively, to the extent primarily used or held for use in the conduct of the Business, the “**Transferred Permits/Licenses**”);

(vii) all rights of the Sellers to use haul roads, utility easements and other rights of way and easements used or held for use primarily in the operation of the Business;

(viii) all warranties, guarantees and similar rights primarily related to the other Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the other Purchased Assets, and claims against suppliers and other third parties in connection with the Purchased Contracts (to the extent such rights are assignable at no cost, expense or penalty to the Sellers or their Affiliates, or at Purchaser’s election if Purchaser agrees to pay for such cost, expense or penalty);

(ix) all goodwill directly associated with the Purchased Assets;

(x) all Documents (other than those described in Section 2.2(h));

(xi) all rights, claims, causes of action and credits owned by any Seller to the extent primarily relating to any Purchased Asset or Assumed Liability, including any such item arising under any guarantee, warranty, indemnity, right of recovery, right of set-off or similar right in favor of such Seller in respect of any Purchased Asset or Assumed Liability (to the extent such rights are assignable at no cost, expense or penalty to the Sellers or their Affiliates, or at Purchaser’s election if Purchaser agrees to pay for such cost, expense or penalty);

(xii) all insurance proceeds or other awards for damage primarily related to the Purchased Assets, other than proceeds or awards with respect to claims made or damages incurred prior to the Closing;

(xiii) all Intellectual Property Rights primarily related to the Business;

(xiv) all Pre-Paid Expenses to the extent primarily related to the other Purchased Assets (the “**Purchased Pre-Paid Expenses**”); and

(xv) all accounts receivable (whether billed or unbilled, but excluding intercompany accounts receivable), rebates, notes, chattel paper, and negotiable

instruments of the Sellers (collectively, to the extent primarily used or held for use in the conduct of the Business, the “**Purchased Receivables**”).

2.2 **Excluded Assets**. Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and the Sellers will retain all right, title and interest to, in and under the Excluded Assets. The term “**Excluded Assets**” means all assets, properties and rights of any Seller not specifically described or included in the definition of “Purchased Assets”, including:

- (a) all cash and cash equivalents;
- (b) all accounts receivable (whether billed or unbilled), rebates, notes, chattel paper, and negotiable instruments of the Sellers not primarily related to the Business;
- (c) all intercompany accounts or notes receivable that are owing from any Seller or any of their Affiliates;
- (d) all cash collateral, cash proceeds from letters of credit, and other collateral posted by or on behalf of the Sellers with respect to the Business including the Mining financial assurances related to the Transferred Permits/Licenses;
- (e) all rights, claims, causes of action and credits to the extent relating to any Excluded Asset or Excluded Liability, including any such item to the extent arising under any guarantee, warranty, indemnity, policy or agreement of insurance, or similar right in favor of a Seller in respect of an Excluded Asset or Excluded Liability;
- (f) rights of setoff and recoupment and other defenses to any claim (as defined in the Bankruptcy Code) asserted against any Seller in the Chapter 11 Cases;
- (g) any shares of capital stock or other equity interest of any of the Sellers or any of their Subsidiaries or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of any of the Sellers or any of their Subsidiaries;
- (h) any Documents prepared in connection with this Agreement or the Transactions or primarily relating to the Chapter 11 Cases, any minute books, stock ledgers, corporate seals and stock certificates of the Sellers, Tax Returns of the Sellers (and any other Tax records of the Sellers), financial statements to the extent primarily related to the Excluded Assets, employee and personnel files, Documents that cannot be disclosed as a result of confidentiality arrangements under agreements with third parties, written or electronic copies of the Documents, and other similar books and records that the Sellers are required by Law to retain or that the Sellers determine are necessary or advisable to retain;
- (i) all avoidance actions or similar causes of action arising under sections 544 through 553 of the Bankruptcy Code, including any proceeds thereof;
- (j) any and all claims of the Sellers for refunds of, credits attributable to, loss carryforwards with respect to, or similar Tax assets relating to (i) Non-Income Taxes attributable to any period (or portion thereof) ending prior to the Closing Date, (ii) Income Taxes, (iii) Taxes

attributable to the Excluded Assets, and (iv) any other Taxes relating to the ownership or operating of the Purchased Assets that are attributable any period (or portion thereof) ending prior to the Closing Date;

(k) assets of any “employee benefit plan” (within the meaning of Section 3(3) of ERISA) or other similar benefit plans, whether or not subject to ERISA, not assumed by Purchaser; and

(l) all assets listed on Schedule 2.2.

2.3 **Assumption of Liabilities**. Subject to entry of the Sale Order or subsequent order with respect to the assumption of liabilities, on the terms and subject to the conditions set forth in this Agreement and the Sale Order, at the Closing, pursuant to the Sale Order, Purchaser will assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms, the following Liabilities (collectively, the “**Assumed Liabilities**”):

(a) all Liabilities of any kind or character to the extent resulting from, arising out of or in connection with the use, operation, possession or ownership of or interest in the Purchased Assets and/or the Business after the Closing;

(b) any Assumed Cure Costs that Purchaser is required to pay pursuant to Section 2.5;

(c) all Liabilities of the Sellers under the Purchased Contracts that arise on or after the Closing Date or arise prior to the Closing Date to the extent requiring performance after the Closing Date, including any advance minimum or similar royalty;

(d) all Liabilities of the Sellers under all laws including those arising out of or relating to (i) the Transferred Permits/Licenses, including such Liabilities thereunder arising out of or relating to all Reclamation and post-mining Liabilities of the Business or the Purchased Assets and such Liabilities thereunder arising with respect to the Interim Period, (ii) any mine operation or safety compliance matters related to the condition of the Purchased Assets or the mining areas of the Business, (iii) the Purchased Assets’ or the Business’s compliance with Environmental Laws and Mining or Mining Safety Laws, and (iv) any conditions arising from a spill, emission, release or disposal into the environment of, or human exposure to, hazardous materials resulting from the operation of the Business or Purchased Assets;

(e) all Transfer Taxes and all Non-Income Taxes, except Non-Income Taxes that are allocated to the Sellers pursuant to Section 10.4;

(f) all Trade Payables arising after the Petition Date that remain unpaid as of the Closing Date (the “**Assumed Payables**”);

(g) all WARN Act Liabilities or obligations of any kind or character to the extent resulting from or arising out of or in connection with the use, operation, possession or ownership of or interest in the Purchased Assets and/or the Business after the Closing; and

(h) all Liabilities listed on Schedule 2.3.

2.4 **Excluded Liabilities.** Notwithstanding anything to the contrary set forth herein, Purchaser will not assume and will be deemed not to have assumed, and the Sellers will remain liable with respect to, the Excluded Liabilities. “**Excluded Liabilities**” means any and all Liabilities of the Sellers arising out of, relating to or otherwise in respect of the following, other than such Liabilities that constitute Assumed Liabilities: (a) all Liabilities of the Sellers arising from the Transactions, (b) any obligations under any employee benefit plans, including retiree healthcare, and (c) any Liability with respect to any coal sales or other goods sold or any service provided by the Sellers or their Affiliates, to the extent arising out of or related to events occurring prior to Closing, including any such Liability or obligation (i) pursuant to any express or implied representation, warranty, agreement, coal specification undertaking or guarantee made by any Seller or any Affiliate of such Seller, or alleged to have been made by Seller or any Affiliate of such Seller, (ii) imposed or asserted to be imposed by operation of applicable Law, or (iii) pursuant to any doctrine of product liability, in each case to the extent arising out of or related to events occurring prior to Closing.

2.5 **Purchased Contracts; Cure Costs.**

(a) Schedule 2.5(a) sets forth a complete list of all 365 Contracts that Purchaser intends to assume at the Closing, which includes for each such 365 Contract the Sellers’ reasonable good faith estimate of the Cure Costs for each such 365 Contract. The Sellers shall promptly update the schedule of proposed purchased 365 Contracts at any time the Sellers or their Representatives learns of additional 365 Contracts related to the Company or, prior to the Sale Hearing (as defined in the Bidding Procedures Order), any changes to the Cure Costs set forth on Schedule 2.5(a).

(b) At any time prior to the Sale Hearing, but only to the extent consistent with the Bidding Procedures Order and the Bidding Procedures, Purchaser will have the right (exercisable in Purchaser’s sole discretion), but not the obligation, to provide written notice to the Sellers of Purchaser’s election to designate a 365 Contract not designated as a Purchased Contract as a Purchased Contract, and upon such designation such 365 Contract will constitute a Purchased Asset and Purchased Contract subject to the terms hereof and will be conveyed to Purchaser under this Agreement at Closing (and, if applicable, will cease to constitute an Excluded Asset), so long as such 365 Contract is added to the Purchased Contracts prior to the entry of any Order of the Bankruptcy Court approving the rejection of such 365 Contract.

(c) To the extent that Purchaser makes a valid designation with respect to any 365 Contracts pursuant to Section 2.5(b), the applicable Exhibits and Schedules to this Agreement will be deemed to have automatically been updated (without action of any Party or Person) to reflect such designation.

(d) If Purchaser exercises its rights in Section 2.5(b) to designate a Purchased Contract as a Purchased Contract, then the Parties acknowledge and agree that there will be no reduction in or increase to the Purchase Price as a result of such designation or change in designation; provided, however, that such designation may increase or decrease (as applicable) the extent of the Assumed Cure Costs.

(e) If Purchaser exercises its rights in Section 2.5(b) to designate a 365 Contract as a Purchased Contract, then Purchaser agrees that it will promptly take such actions as are

reasonably requested by the Sellers to assist in obtaining a finding of adequate assurance of future performance as required under the Bankruptcy Code with respect to each Purchased Contract.

(f) At the Closing and pursuant to section 365 of the Bankruptcy Code, the Sellers will assume the Purchased Contracts (to the extent not previously assumed) and, subject to the terms herein, assign the Purchased Contracts to Purchaser, and Purchaser, subject to the terms herein, will take assignment of the Purchased Contracts. All Assumed Cure Costs will be paid by Purchaser, as and when determined by a final order of the Bankruptcy Court pursuant to the procedures set forth in the Bidding Procedures Order or the Sale Order, and not by the Sellers; and the Sellers and their Affiliates will have no Liability for any Assumed Cure Costs.

2.6 **Non-Assignment of Assets.**

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not affect the assignment or transfer of any Purchased Asset if (i) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “**Necessary Consent**” or collectively, the “**Necessary Consents**”), would constitute a breach, default or violation thereof or of any Law or Order thereunder and (ii) the Bankruptcy Court has not entered an Order approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and the Sellers and Purchaser will use their respective commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided, however, that the Sellers will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would materially and adversely affect the rights of Purchaser to such Purchased Asset following the Closing, the Sellers and Purchaser will cooperate in a mutually agreeable arrangement, to the extent feasible, under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement and the Sale Order; provided, that, for the avoidance of doubt, any Liability resulting from, arising out of or in connection with the foregoing will be deemed to be an Assumed Liability.

(b) Subject to Section 2.6(a), if after the Closing (i) Purchaser holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Purchased Assets or Assumed Liabilities, Purchaser or the applicable Seller, will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party.

2.7 **Further Conveyances and Assumptions.** From time to time following the Closing, the Sellers and Purchaser will use their commercially reasonable efforts to, and will use their commercially reasonable efforts to cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to

assure fully to Purchaser and its respective successors and/or permitted assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Transactions; provided, that nothing in this Section 2.7 will require Purchaser or any of its Affiliates to assume any Liabilities other than the Assumed Liabilities.

III. CONSIDERATION

3.1 **Consideration.** The aggregate consideration for the Purchased Assets (the “**Purchase Price**”) will be:

- (a) \$[•] in cash (the “**Cash Amount**”); and
- (b) the assumption of the Assumed Liabilities.

3.2 **Purchase Price Deposit.** On the date hereof, Purchaser shall deposit with the Company an amount equal to \$[•]¹ together with any interest having accrued on such amount between the date hereof and such disposition (the “**Deposit Amount**”), which will be either refunded to Purchaser or retained by the Company as set forth in the Bidding Procedures and Section 4.6. The Deposit Amount is nonrefundable, except as otherwise expressly set forth in Section 4.6 or the Bidding Procedures. If the Closing occurs, the Deposit Amount will be retained by the Company and applied towards the amount payable by Purchaser in accordance with the Bidding Procedures.

3.3 **Payment of Purchase Price.** At the Closing:

- (a) Purchaser will pay to the Sellers, in immediately available funds to the account or accounts designated by the Company, an amount equal to (i) the Cash Amount minus (ii) the Deposit Amount.
- (b) The Deposit Amount shall be applied towards the Purchase Price pursuant to the terms and conditions of this Agreement.
- (c) Purchaser shall assume the Assumed Liabilities pursuant to instruments delivered at the Closing as provided in Section 4.3.
- (d) All payments of the Purchase Price will be made free and clear of, and without any reduction in respect of, any withholding or similar Taxes.

IV. CLOSING AND TERMINATION

4.1 **Closing Date.** Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing

¹ **Note to Draft:** To be the greater of (i) 10% of the cash portion of the unadjusted Purchase Price (the aggregate value of the cash and non-cash consideration) and (ii) \$5,000,000.00.

of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the “**Closing**”) will take place remotely by the electronic exchange of documents and signatures in PDF format at [10:00 a.m. Eastern time] on the date that is two Business Days following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be first satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the “**Closing Date.**”

4.2 **Deliveries by the Sellers.** At the Closing, the Sellers will deliver to Purchaser:

(a) the General Assignments and Bills of Sale for the Purchased Assets, each duly executed by the applicable Seller;

(b) the Lease Assignment and Assumption Agreements for the assumed Leases and Purchased Leased Real Property, each duly executed by the applicable Seller;

(c) the Contracts Assignment and Assumption Agreements for the assumed Contracts, each duly executed by the applicable Seller;

(d) special warranty or limited warranty deeds (or similar deeds to convey title with warranties limited only to grantor’s acts in a particular jurisdiction where the Owned Real Property is located) to the Owned Real Property in recordable form, duly executed by the applicable Seller;

(e) all documents of title and instruments of conveyance (duly executed by the applicable Seller) necessary to transfer record and/or beneficial ownership to Purchaser of all automobiles, trucks and trailers owned by the Sellers (and any other Purchased Assets owned by the Sellers which require execution, endorsement and/or delivery of a document in order to vest record or beneficial ownership thereof in Purchaser) which are included in the Purchased Assets; provided, that in the event one or more of such documents of title and/or instruments of conveyance are not delivered by the Sellers to Purchaser on or before the Closing Date, the Sellers shall deliver such documents of title and/or instruments of conveyance to Purchaser as promptly as reasonably practicable following the Closing Date; provided, further, that, for the avoidance of doubt, the failure of the Sellers to deliver any such document of title and/or instrument of conveyance to Purchaser on or before the Closing Date shall not be deemed a failure to satisfy this delivery obligation.

(f) the officers certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b);

(g) a certificate of non-foreign status that meets the requirements set forth in Treasury Regulation Section 1.1445-2(b)(2) from each Seller (or, if a Seller is classified as a disregarded entity for U.S. federal income Tax purposes, from such Seller’s regarded owner); and

(h) all other deeds, endorsements, assignments, company seals, instruments of transfer and other instruments of conveyance reasonably requested by Purchaser or required to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser free and

clear of all Liens (other than those released by the Sale Order, those created by Purchaser and Transferred Exceptions).

4.3 **Deliveries by Purchaser.** At the Closing, Purchaser will deliver to the Company:

- (a) the consideration specified in Section 3.3(a) of this Agreement;
- (b) the General Assignments and Bills of Sale for the Purchased Assets, each duly executed by Purchaser;
- (c) the Lease Assignment and Assumption Agreements for the assumed Leases and Purchased Leased Real Property, each duly executed by Purchaser;
- (d) the Contracts Assignment and Assumption Agreements for the assumed Contracts, each duly executed by Purchaser;
- (e) evidence reasonably satisfactory to the Company that the Required Bonding has been established, or stands ready to be established upon the completion of the transactions contemplated by the Permit Transfer Agreements, including binding commitments from sureties sufficient to replace all existing reclamation and surety bonds of the Sellers related to the Transferred Permits/Licenses;
- (f) the officers certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and
- (g) all such other documents, instruments and certificates, reasonably requested by the Sellers, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 **Termination of Agreement.** This Agreement may be terminated prior to the Closing as follows:

- (a) by Purchaser or the Company, if the Closing has not occurred by [5:00 p.m. Eastern time] on [●] (the “**Outside Date**”); provided, however, that if the Closing has not occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or any Seller, then such breaching Party (or the Company if a Seller is the breaching Party), may not terminate this Agreement pursuant to this Section 4.4(a);
- (b) by mutual written consent of the Company and Purchaser;
- (c) by Purchaser, if the Sellers breach any representation or warranty or any covenant or agreement contained in this Agreement, such breach would reasonably be expected to result in a failure of a condition set forth in Sections 9.1 or 9.3 and such breach, if curable, has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by Purchaser to the Company of such breach and (ii) the Outside Date; provided, that Purchaser is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement;

(d) by the Company, if Purchaser breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would reasonably be expected to result in a failure of a condition set forth in Sections 9.2 or 9.3 and such breach, if curable, has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by the Company to Purchaser of such breach and (ii) the Outside Date; provided, that no Seller is then in material breach of any representation, warranty, covenant or agreement contained in this Agreement; and

(e) by Purchaser or the Company if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions, it being agreed that the Parties will promptly appeal any adverse determination which is not non-appealable and use their respective commercially reasonable efforts to pursue such appeal unless and until this Agreement is terminated pursuant to this Section 4.4; provided, that the terminating Party is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement.

4.5 **Procedure Upon Termination.** In the event of termination pursuant to Section 4.4, the terminating Party will give written notice thereof to the other Party or Parties, and this Agreement will terminate as described in Section 4.6, and the purchase of the Purchased Assets hereunder will be abandoned, without further action by Purchaser or any Seller.

4.6 **Effect of Termination.** In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and there will be no Liability or obligation on Purchaser, any Seller or any of their respective Representatives; provided, however, that the provisions of Section 3.2, this Section 4.6, Section 8.9 and Article XI (other than Section 11.3) and, to the extent necessary to effectuate the foregoing enumerated provisions, Section 1.1 hereof, will survive any such termination and will be enforceable hereunder, provided, further, that nothing in this Section 4.6 will be deemed to release any Party from Liability for any Willful Breach of this Agreement prior to termination or for Fraud, provided, further, that nothing in this Section 4.6 will be deemed to interfere with the Company's rights to retain the Deposit Amount under Section 3.2 hereof. Notwithstanding anything to the contrary in this Agreement, but without limiting the Parties' rights set forth in Section 11.3 prior to termination of this Agreement or the second proviso of the first sentence of this Section 4.6, (a) if this Agreement is terminated by Purchaser pursuant to Section 4.4(a) or Section 4.4(c) or by the Company pursuant to Section 4.4(a) (if at such time Purchaser would also be entitled to terminate the Agreement pursuant to such provision), then the Purchaser shall receive a refund from the Sellers in an amount equal to the Deposit Amount within five Business Days of such termination, and the Parties acknowledge and agree that in such circumstance, (i) the amount of the Deposit Amount represents the Parties' reasonable estimate of the Purchaser's actual damages and the extent of actual damages is difficult and impracticable to ascertain, (ii) the return of the Deposit Amount as liquidated damages is reasonable and does not constitute a penalty and (iii) the return of the Deposit Amount shall be the sole and exclusive remedy of the Purchaser in lieu of any other damages or remedies available at Law or in equity, including any right of specific performance or other equitable relief pursuant to Section 11.3, and (b) if this Agreement is terminated (x) by the Company pursuant to Section 4.4(a) (if at such time Purchaser is not entitled to terminate the Agreement pursuant to such provision) or Section 4.4(d) or (y) by either the Company or Purchaser pursuant to

Section 4.4(e) (provided that the Company is not in material breach), then the Company shall be entitled to retain the Deposit Amount, and the Parties acknowledge and agree that in such circumstance, (i) the amount of the Deposit Amount represents the Parties' reasonable estimate of the Company's actual damages and the extent of the actual damages is difficult and impracticable to ascertain, (ii) the retention of the Deposit Amount as liquidated damages is reasonable and does not constitute a penalty and (iii) the retention of the Deposit Amount shall be the sole and exclusive remedy of the Company in lieu of any other damages or remedies available at Law or in equity, including any right of specific performance or other equitable relief pursuant to Section 11.3; provided, that, for the avoidance of doubt, nothing in this sentence shall limit the Company's remedies in the case of a Willful Breach of this Agreement prior to termination or Fraud.

V. REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except as set forth in the Disclosure Schedules and/or in the Company SEC reports filed with the SEC prior to the Execution Date (excluding disclosures referred to in "Forward-Looking Statements," "Risk Factors," and any other disclosure therein to the extent they are related to forward-looking statements), the Sellers hereby jointly and severally represent and warrant to Purchaser that:

5.1 **Organization and Good Standing.** Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and, subject to any limitations that may be imposed on such Seller resulting from or relating to the Chapter 11 Cases, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

5.2 **Authorization of Agreement.** Subject to entry of the Sale Order and such other authorization as may be required by the Bankruptcy Court, each Seller has the requisite corporate or similar power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of each Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by the applicable Seller and (assuming the due authorization, execution and delivery by the other Parties and the entry of the Sale Order) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of each applicable Seller enforceable against such Seller in accordance with its respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 **Governmental Consents.** Except to the extent rendered unnecessary through the entry of the Sale Order, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of any

Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which any Seller is a party, the compliance by the Sellers with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by the Sellers of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except (a) for the entry of the Sale Order, (b) as would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect, and [(c) for compliance with applicable requirements of the HSR Act].

5.4 **Title to Purchased Assets.** Subject to Section 2.6, and subject to the entry of the Sale Order, the Sellers own the Purchased Assets that are tangible personal property free and clear of all Liens (other than Permitted Exceptions) and, at the Closing, Purchaser will be vested with good title to such Purchased Assets, free and clear of all Liens (other than Transferred Exceptions and Liens created by Purchaser) and Excluded Liabilities, to the fullest extent permissible under Law, including Sections 105, 363, and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure.

5.5 **Validity of Purchased Contracts.** As of the date of this Agreement, each Purchased Contract is in full force and effect and is a valid and binding obligation of each Seller party thereto and, to the Knowledge of the Sellers, the other parties thereto in accordance with its terms and conditions, except (x) to the extent the failure to be in full force and effect and a valid and binding obligation would not, individually or in the aggregate, reasonably be expected to result in a Seller Material Adverse Effect, or (y) as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), or (c) the obligation to pay Cure Costs under Section 2.5. As of the date of this Agreement, no Seller has received any written notice of the intention of any third party to terminate any Purchased Contract. As of the date of this Agreement, to the Knowledge of the Sellers, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under or a violation of any such Purchased Contract or would cause the acceleration of any obligation of any Seller or, to the Knowledge of the Sellers, any other party thereto or the creation of a Lien upon any Purchased Asset, except for such events that would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect.

5.6 **Litigation.** Except for Legal Proceedings and Orders that do not have, and would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect, as of the date of this Agreement, there are no Legal Proceedings or Orders pending or, to the Knowledge of the Sellers, threatened against any Seller.

5.7 **Financial Advisors.** The Sellers have not incurred any obligation or Liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or Transactions for which Purchaser is or will become liable.

5.8 **Environmental Matters.** Except as would not, individually or in the aggregate, reasonably be expected to result in a Seller Material Adverse Effect:

(a) The Sellers' operation of the Business, and the Purchased Real Property related thereto, have complied during the previous 3 years and, as of the date of this Agreement, are in compliance with all applicable Environmental Laws;

(b) The Sellers have not received any written notice, report or other information alleging any pending or threatened violation, non-compliance, Liability or potential Liability under Environmental Laws with regard to any of the Purchased Real Property or the Business, or any prior business for which the Sellers have retained Liability under any Contract, nor do the Sellers have any unresolved claims alleging any violations of Environmental Law;

(c) As of the date of this Agreement, no Legal Proceeding is pending or, to the Sellers' Knowledge, threatened under any Environmental Law or environmental provision of any Mining and Mining Safety Law against the Sellers or with respect to the Purchased Real Property or the Business, nor are there any Orders outstanding under any Environmental Law or any environmental provision of any Mining and Mining Safety Law with respect to the Purchased Real Property or the Business; and

(d) The Sellers (i) hold and are, and have been during the previous 3 years, in compliance with all Permits required under Environmental Law (each of which is in full force and effect and is not subject to appeal, except in such instances where the requirement to hold a Permit required under Environmental Law is being contested in good faith by the Sellers by appropriate proceedings diligently conducted) for any of their current operations or for the current ownership, operation or use of the Purchased Real Property, (ii) have used commercially reasonable efforts to cause all contractors, lessees and other Persons occupying, operating or using the Purchased Real Property to comply with Environmental Law and obtain all necessary Permits required under Environmental Law, and (iii) have not received any written notice that the Permits required under Environmental Law will not be renewed.

(e) The Sellers have furnished or made available to Purchaser all material and non-privileged environmental site assessment reports that are in the Sellers' possession or control and relating to the Business or the Purchased Assets and that have been prepared in the 3 years preceding the Execution Date.

The representations and warranties set forth in this Section 5.8 constitute the sole and exclusive representations and warranties of Seller with respect to Environmental Laws and any environmental matters and all Mining and Mining Safety Laws in connection with the Transaction, the Business and the Purchased Assets, and no other provision of this Agreement shall be deemed to address or include such matters.

5.9 **Compliance with Applicable Laws; Permits.** (a) The Sellers and each of their Affiliates own and operate, and for each of the prior three years have at all times owned and operated, the Purchased Assets and conduct, and for each of the prior three years have at all times conducted, the Business, in each case, in compliance in all material respects with all Orders, Permits and Law applicable to the Sellers, such Affiliates of the Sellers, the Purchased Assets or

the Business, as applicable, except for prior instances of non-compliance that have been fully and finally resolved to the satisfaction of all Governmental Bodies with jurisdiction over such matter or except as would not, individually or in the aggregate, reasonably be expected to result in a Seller Material Adverse Effect, and (b) as of the date of this Agreement, no Seller nor, to the Knowledge of the Sellers, any of its respective Representatives, has received in the past 24 months any written notice from a Governmental Body or third party alleging that any Seller, any of its respective Affiliates or the Business is not in compliance in any material respect with applicable Orders, Permits and Law. The Permits set forth on Schedule 5.9 are all of the material Permits held by the Sellers with respect to the current operation and conduct of the Business, the Purchased Assets or the Assumed Liabilities. No Seller nor any officer or director of any Seller is “permit blocked” on the Applicant Violator System established pursuant to SMCRA (or any applicable state system) (the “**Applicant Violator System**”) by any Governmental Body.

5.10 **Employee Benefit Plans.** No employee benefit plan maintained, sponsored or contributed to by the Sellers in the six year period preceding the Closing Date is or has been subject to the minimum funding requirements of Section 412 of the Code or subject to Title IV or ERISA.

5.11 **Taxes.** All material Tax Returns required to be filed by the Sellers with respect to the Purchased Assets have been filed, and each Seller has paid all material Taxes shown as due on each such Tax Return. No material examination of any such Tax Return of the Sellers is currently in progress by any Governmental Body. There are no Liens for Taxes on any of the Purchased Assets attributable to Taxes (other than Permitted Exceptions). The representations and warranties set forth in this Section 5.11 constitute the sole and exclusive representations and warranties of Seller with respect to Tax matters in connection with the Transaction, the Business and the Purchased Assets, and no other provision of this Agreement shall be deemed to address or include such matters.

5.12 **No Other Representations or Warranties; Schedules.** Except for the representations and warranties contained in this Article V (as modified by the Disclosure Schedules and/or the Company SEC reports filed with the SEC prior to the Execution Date), none of the Sellers nor any other Person makes any other express or implied representation or warranty with respect to the Sellers, the Business, the Purchased Assets, the Assumed Liabilities or the Transactions, and each Seller disclaims any other representations or warranties, whether made by the Sellers, any Affiliate of the Sellers, or any of the Sellers’ or their Affiliates’ respective Representatives. Except for the representations and warranties contained in this Article V (as modified by the Disclosure Schedules and/or the Company SEC reports filed with the SEC prior to the Execution Date), each Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser or any of its Representatives by any Representative of the Sellers or any of its Affiliates). The Sellers make no representations or warranties to Purchaser regarding the probable success or profitability of the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto will not be deemed to constitute an acknowledgment

that any such matter is required to be disclosed or is material or that such matter, individually or in the aggregate, could result in a Seller Material Adverse Effect. The Sellers acknowledge and agree to sell the Purchased Assets and the Business without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Purchaser, except as expressly set forth in this Agreement.

VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to the Sellers that:

6.1 **Organization and Good Standing.** Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the state of its organization and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 **Authorization of Agreement.** Purchaser has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of Purchaser. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other Parties) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party constitutes legal, valid and binding obligations of Purchaser enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 **Conflicts; Consents of Third Parties.** No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the taking by Purchaser of any other action contemplated hereby or thereby, except for (i) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make, would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect, and [(ii) compliance with the applicable requirements of the HSR Act].

6.4 **Litigation.** There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect. Purchaser is not subject to any Order except to the extent the same would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

6.5 **Financial Advisors.** No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the Transactions, and no Person is entitled to any fee or commission or like payment in respect thereof that would or could be owed by or claimed against the Sellers or any of the consideration to be paid hereunder.

6.6 **Capability.**

(a) Purchaser has and will have at Closing sufficient funds available to it in cash to pay or cause to be paid the Cash Amount and the fees and expenses required to be paid by Purchaser in connection with the Transactions, to effect the Transactions, and to establish and maintain the Required Bonding as of the Closing. As of the date hereof and upon the consummation of the Transactions, (i) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (ii) Purchaser will not be left with unreasonably small capital, (iii) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and (iv) the capital of Purchaser will not be impaired.

(b) Purchaser is and will be capable of taking transfer of, or obtaining replacement or overlapping permits for, and of posting replacement Required Bonding with respect to, the Transferred Permits/Licenses, and none of Purchaser or its Affiliates have been denied, or are subject to denial of, any application for any mining license, permit or other authorization of a Governmental Body due to application of the Applicant Violator System established pursuant to the SMCRA (or any applicable state system).

6.7 **Condition of the Purchased Assets.** Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that the Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Sellers in Article V hereof (as modified or supplemented by the Disclosure Schedules hereto and/or the Company SEC reports filed with the SEC prior to the Execution Date), Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

6.8 **Exclusivity of Representations and Warranties.** Except for the representations and warranties contained in this Article VI (as modified by the Disclosure Schedules), neither Purchaser nor any other Person makes any other express or implied representation or warranty with respect to the Purchaser or the Transactions, and Purchaser disclaims any other representations or warranties, whether made by Purchaser or any of its respective Affiliates or any of Purchaser’s or its Affiliates’ respective Representatives. Except for the representations and

warranties contained in Article V, Purchaser agrees and acknowledges that none of the Sellers or any Person on behalf of the Sellers makes any other express or implied representation or warranty with respect to the Sellers, the Purchased Assets, the Assumed Liabilities or the Business or with respect to any other information provided or made available to Purchaser in connection with the Transactions, including information conveyed at management presentations, in a virtual data room or in due diligence sessions and, without limiting the foregoing, including any estimates, projections, predictions or other forward-looking information. Purchaser acknowledges and agrees that the Purchased Assets are sold “as is” and Purchaser agrees to accept the Purchased Assets and the Business in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Sellers, except as expressly set forth in this Agreement.

VII. BANKRUPTCY COURT MATTERS

7.1 **Bankruptcy Court Filings.** The Sellers will pursue the entry of the Sale Order in accordance with the Bidding Procedures Order unless a Seller’s Board of Directors (or applicable committee thereof) concludes in good faith, after consultation with such Seller’s outside advisors, that doing so would be inconsistent with the exercise of its fiduciary duties or applicable law. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Sellers to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Purchaser of the Purchased Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. If the entry of the Sale Order is appealed, the Sellers and Purchaser will use their respective commercially reasonable efforts to defend such appeal(s) unless, in the Sellers’ case, a Seller’s Board of Directors (or applicable committee thereof) concludes in good faith, after consultation with such Seller’s outside advisors, that doing so would be inconsistent with the exercise of its fiduciary duties.

VIII. COVENANTS

8.1 Access to Information.

(a) From the date hereof through the Closing Date, Purchaser will be entitled for purposes of consummating the Transactions to make such investigation of the Purchased Assets and the Assumed Liabilities as it reasonably requests; provided, however, that prior to the Closing Date, Purchaser shall not conduct any sampling of soil, sediment, surface water, ground water or building material at, on, or under the Purchased Assets or within any facility on the Purchased Assets. Any such investigation and examination will be conducted upon reasonable advance notice and under reasonable circumstances so as not to disturb the operation of the Business and will be subject to restrictions under applicable Law. The Sellers will direct and use their commercially reasonable efforts to cause their respective Representatives to cooperate with Purchaser and Purchaser’s Representatives in connection with such investigation and examination, and Purchaser and its Representatives will cooperate with the Sellers and their Representatives. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent

that it would require the Sellers to disclose information that would cause material competitive harm to a Seller, would violate attorney-client privilege, or cannot be disclosed as a result of confidentiality arrangements under agreements with third parties. The Sellers will promptly deliver to Purchaser all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed in any other judicial or administrative proceeding related to the Purchased Assets and the Transactions.

(b) For a period of six years from the Closing Date, Purchaser shall grant the Sellers and their Affiliates and their respective Representatives access at all reasonable times to all of the Documents relating to each Purchased Asset, and shall afford the Sellers and their Affiliates and their respective Representatives the right to take extracts therefrom and to make copies thereof, including in connection with financial statements, Taxes and SEC reporting obligations and to the extent reasonably necessary to implement the provisions of, or to investigate or defend any claims or Legal Proceedings among the Parties or their Affiliates arising under, this Agreement. Purchaser shall maintain such Documents relating to periods prior to the Closing Date until the sixth anniversary of the Closing Date, or if any of the Documents pertain to any claim or Legal Proceeding or dispute pending on the sixth anniversary of the Closing Date, Purchaser shall maintain any of the Documents designated by the Sellers or their Representatives until such claim or Legal Proceeding or dispute is finally resolved and the time for all appeals has been exhausted. Notwithstanding anything herein to the contrary, in the event of a dispute, the furnishing of, or access to, the Documents shall be subject to applicable Law relating to discovery. In addition, if the Sellers or their Affiliates reasonably believe it is necessary or prudent to disclose any such documents or information to comply with any Law or Order or any request made by any Governmental Body or in connection with any legal, regulatory or administrative proceeding, Order or process, the Sellers and their Affiliates may do so, without liability hereunder.

8.2 **Actions Pending the Closing.** Except (a) as required by applicable Law or by Order of the Bankruptcy Court, (b) as otherwise expressly contemplated by this Agreement, (c) in the Ordinary Course of Business or (d) with the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed), during the period from the date hereof to and through the Closing Date, the Sellers will: (i) use commercially reasonable efforts to carry on the Business in the Ordinary Course of Business of the Sellers and use commercially reasonable efforts to maintain, preserve and protect the Purchased Assets in their current condition, ordinary wear and tear excepted; (ii) maintain their books, accounts and records in the Ordinary Course of Business; (iii) not materially amend, modify, terminate, waive any rights under or create any Lien (other than a Lien that will not be transferred to Purchaser at the Closing or that does not materially and adversely affect the Purchased Assets, taken as a whole or that is a Permitted Exception) with respect to any of the Purchased Contracts; (iv) use commercially reasonable efforts to defend and protect the Purchased Assets from infringement or deterioration; (v) comply with applicable material Laws with respect to the Business or any Purchased Assets, other than with respect to the failure of such compliance as would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect; and (vi) not enter into any agreement or commitment to take any action prohibited by this Section 8.2.

8.3 **Consents.** The Sellers and Purchaser will use their respective commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Sections 2.6(a) or 5.3 and

the Necessary Consents; provided, however, that none of the Sellers or Purchaser will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval.

8.4 **Regulatory Approvals.**

(a) Purchaser and the Sellers will: (i) make or cause to be made all filings required of each of them or any of their respective Affiliates under the HSR Act or other Antitrust Laws with respect to the Transactions as promptly as practicable (but in no event later than 10 Business Days after the Execution Date); (ii) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents or other materials received by each of them or any of their respective subsidiaries from the Federal Trade Commission (the “**FTC**”), the Antitrust Division of the United States Department of Justice (the “**Antitrust Division**”) or any other Governmental Body in respect of such filings or such transactions; and (iii) cooperate with each other in connection with any such filing (including, to the extent permitted by applicable Law, providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other Governmental Body under any Antitrust Laws with respect to any such filing or any such transaction. Each such party will use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable Law in connection with the Transactions. Each such party will promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto will independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate. Subject to applicable Law, the Parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. The Sellers and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.4 as “outside counsel only.” Such materials and the information contained therein will be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (the Sellers or Purchaser, as the case may be).

(b) Each Party hereto will use its commercially reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the Transactions under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the “**Antitrust Laws**”). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement is in violation of any Antitrust Law, each Party hereto will cooperate and use

its commercially reasonable efforts to contest and resist any such Legal Proceeding, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent (“**Antitrust Order**”), that is in effect and that prohibits, prevents or restricts consummation of the Transactions, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless, by mutual agreement, Purchaser and the Sellers decide that litigation is not in their respective best interests. Each Party hereto will use its commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement. In connection with and without limiting the foregoing, each Party hereto agrees to use its commercially reasonable efforts to promptly take any and all steps necessary to avoid or eliminate each and every impediment under any Antitrust Laws that may be asserted by any Federal, state local and non-United States antitrust or competition authority, so as to enable the parties to close the Transactions as expeditiously as possible.

(c) Without limiting the generality of the foregoing or any other provision of this Agreement, if requested by the Sellers or a Governmental Body in order to obtain clearance under or to terminate any waiting period required by any Antitrust Law or to avoid the entry of, or to effect the dissolution of, any Antitrust Order that would have the effect of preventing or delaying the Closing beyond the Outside Date, Purchaser will propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold, separate Order or otherwise, the sale, divestiture or disposition of such assets or businesses of Purchaser or its Subsidiaries, including the Purchased Assets, or otherwise offer to take or offer to commit to take any action which it is capable of taking, and if the offer is accepted, take or commit to take, such action that limits its freedom of action with respect to, or its ability to retain, any of the businesses or assets of Purchaser or their respective Subsidiaries, including the Purchased Assets. For the avoidance of doubt, Purchaser will take any and all actions necessary to ensure that (i) no requirement for a waiver, consent or approval of the FTC, the Antitrust Division, any State Attorney General or other Governmental Body; (ii) no decree, judgment, injunction, temporary restraining Order or any other Order in any suit or proceeding; and (iii) no other matter relating to any Antitrust Law, in each case, would preclude consummation of the Transactions by the Outside Date.

8.5 **Further Assurances.** Subject to the other provisions of this Agreement and any relevant Order of the Bankruptcy Court, each of Purchaser and each Seller will use its commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transactions, (b) provide the other Parties with reasonable cooperation and take such actions as such other Parties may reasonably request in connection with the consummation of the Transactions, and (c) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions. Without limiting the foregoing, each of Purchaser and each Seller will use its commercially reasonable efforts to defend any Legal Proceedings which would prevent the condition to Closing described in Section 9.3(a) from being satisfied, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Body with respect thereto vacated or reversed, and will cooperate with each other in connection with the foregoing. Notwithstanding anything to the contrary provided elsewhere in this Agreement, in no event shall Seller be required, compelled or obligated to take any action (or make any omission) if a Seller’s Board of Directors (or applicable committee

thereof) concludes in good faith, after consultation with such Seller's outside advisors, that such action (or omission) would be inconsistent with the exercise of its fiduciary duties.

8.6 **Transferred Permit/License and Surety Bond Matters.**

(a) To the extent permitted by Law, Purchaser shall prepare, at its sole cost and expense, all applications required to transfer the Transferred Permits/Licenses (which applications shall include the necessary applications, notices, forms and other documents to appoint Purchaser as the designated operator on the Transferred Permits/Licenses with the appropriate Governmental Body). The Sellers shall cooperate with and provide reasonable assistance to Purchaser in connection with such preparation and such applications shall be reasonably satisfactory to Purchaser. As promptly as practicable and in no event later than ten days after the date hereof, Purchaser shall properly file all applications required to transfer the Transferred Permits/Licenses from the Sellers and their Affiliates to Purchaser with the appropriate Governmental Body (except for any applications which may not be filed prior to Purchaser being party to a fully executed surety agreement, which shall be properly filed promptly after the applicable surety agreement is executed in accordance with this Agreement, and in any event prior to the Closing). From and after the Closing, Purchaser shall use its best efforts to pursue the prompt transfer of the Transferred Permits/Licenses to Purchaser. The Sellers agree to provide the cooperation reasonably requested by Purchaser to procure the transfer of the Transferred Permits/Licenses.

(b) Purchaser shall take, or cause to be taken, all actions and do, or cause to be done, all things necessary (including under all Laws) as promptly as reasonably practicable after the date hereof to (i) put in place with the appropriate Governmental Body the Required Bonding necessary to transfer the Transferred Permits/Licenses from the Sellers and their Affiliates to Purchaser in such a manner so as to permit the termination of all existing reclamation and surety bonds of the Sellers and underlying bond agreements (and related instruments) related to the Transferred Permits/Licenses (the "**Seller Bonds**") and (ii) substitute itself for and replace the applicable Seller, and to cause each such Seller to be released, effective as of the Closing, in respect of all obligations under any other guarantee, indemnity, surety bond, letter of credit, keepwell agreement, consumer financing arrangement, or other similar commitment, understanding, agreement or obligation arising in connection with or necessary for the operation of the Business (together with the Seller Bonds, the "**Indemnified Guarantees**"); provided, that if Purchaser is unable to cause such transfer and/or substitution and release prior to the Closing, then Purchaser shall continue to be obligated to take such actions to effect such transfer and/or substitution and release as soon as possible after the Closing. Purchaser shall be solely responsible for the establishment and maintenance of the Required Bonding, and will take, or cause to be taken, such actions as are necessary to return to the Sellers any of the Sellers' property pledged or otherwise provided to secure the Transferred Permits/Licenses as promptly as practicable following the Closing. Purchaser further agrees that, to the extent (x) the Seller Bonds are not terminated (and replaced with the Required Bonding) as of the Closing and/or (y) the Sellers are not fully and irrevocably released and discharged from the Indemnified Guarantees, Purchaser shall reimburse the Sellers for, any and all amounts paid, including costs or expenses in connection with such Indemnified Guarantees (including premiums paid or payable with respect to the Seller Bonds for any period of time during which the Seller Bonds remain outstanding following the Closing) and expenses in maintaining such Indemnified Guarantees until such time as such Indemnified Guarantees are replaced in accordance with the foregoing, whether or not any such Indemnified

Guarantee is drawn upon or required to be performed, and shall in any event promptly reimburse and fully indemnify and hold harmless the Sellers (and their respective Representatives) to the extent any Indemnified Guarantee is called upon and the Sellers make any payment or are obligated to reimburse any other Person thereunder (or to the extent any Legal Proceeding is commenced by any Person who is or claims to be entitled to the benefit of or claims to be entitled to payment, reimbursement or indemnity with respect to any Indemnified Guarantees and any Seller is party to such a Legal Proceeding).

(c) To the extent, if any, that any Seller directly or indirectly retains, remains liable for, or has any credit exposure with respect to, any Indemnified Guarantee, Purchaser shall, (i) upon request, promptly and as soon as available furnish to Seller such annual, quarterly and monthly financial statements of Purchaser, including consolidated balance sheets, statements of income, cash flows and stockholders' equity, for the applicable period, all in reasonable detail, and any other financial information or assurances as Seller may from time to time reasonably request, (ii) permit Seller to participate in any discussions or negotiations regarding any material term of any contract or agreement related to any Indemnified Guarantee for so long as the Sellers or any of their Affiliates retain or remain directly or indirectly liable for, or have any credit exposure with respect to, such Indemnified Guarantee and (iii) from the Closing Date until the date on which no Seller directly or indirectly retains, remains liable for or has any credit exposure with respect to any Indemnified Guarantee, pay the applicable Seller, on a monthly basis (promptly following the end of each month), the Interest Rate on the aggregate outstanding amount of the Indemnified Guarantees with respect to which any Seller directly or indirectly retains, remains liable for or has any credit exposure.

(d) To the extent permitted by applicable Law, from and after the Closing, and subject to Purchaser's obligation under Section 8.6(a) to promptly effect the transfer of the Transferred Permits/Licenses to Purchaser, Purchaser shall operate under the Transferred Permits/Licenses as the designated operator. To the extent allowed by and in accordance with Law, after the Closing and until the appropriate Governmental Body approves the transfer of the Transferred Permits/Licenses to Purchaser (the "**Interim Period**"), the Sellers grant Purchaser the right to conduct, at the sole cost and expense of Purchaser, mining operations following the Closing on the Purchased Real Property under the Transferred Permits/Licenses as the designated operator. Purchaser and the Sellers will use commercially reasonable efforts to make such filings, applications, notices or deliver any other documents as necessary to give effect to the foregoing arrangement during the Interim Period. Purchaser shall fully indemnify and hold harmless the Sellers with respect to any Liability incurred in connection with or resulting from the foregoing arrangements.

(e) During the Interim Period, Purchaser shall, and shall cause its Affiliates to: (i) maintain such Transferred Permit/License and comply with all Laws governing, and all conditions and requirements of, or pertaining to, any such Transferred Permits/Licenses (which shall include the performance of all actions required by applicable Laws and all conditions and requirements of the Transferred Permit/License); and (ii) be solely responsible (including all required remedial measures or abatement actions) for all incidents of violation, non-compliance, and similar occurrences related to the Transferred Permits/Licenses that arise from the actions of or omissions by Purchaser and its Affiliates and their respective agents, Representatives and business relations while operating under such Transferred Permits/Licenses during the Interim

Period. Purchaser shall promptly deliver to the Sellers written notice of any such incidents or occurrences. In the event the Purchaser fails to cure any such matters, the Sellers shall have the right, but not the obligation, to cure such matters (including right of entry onto the applicable Purchased Real Property). Purchaser shall promptly reimburse the Sellers for the reasonable costs of any such cure. The Sellers shall have (and Purchaser shall grant) all reasonable rights of entry onto the Purchased Real Property necessary for the Sellers to maintain the Transferred Permits/Licenses in the event Purchaser fails to maintain the Transferred Permits/Licenses during the Interim Period.

(f) Upon the completion of the transfer of each applicable Transferred Permit/License, Purchaser shall cooperate with the Sellers to secure (i) the prompt termination of the applicable reclamation and surety bonds of the Sellers related thereto, (ii) the prompt termination of the underlying bond agreement (and related instruments) related to the Transferred Permit/License (to the extent all Transferred Permits/Licenses subject to the applicable bond agreement (or related instrument) have been transferred to Purchaser), and (iii) the prompt release to the Sellers of the related collateral.

(g) The above notwithstanding, from and after the Closing, Purchaser shall remain liable for the Assumed Liabilities related to the Transferred Permits/Licenses even if any applicable Governmental Body fails to approve the transfers of any of the Transferred Permits/Licenses to Purchaser.

8.7 **Publicity.** Prior to Closing, unless otherwise required by applicable Law, Bankruptcy Court requirement or obligations of Purchaser or the Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, provided, however, in each case, the applicable Party shall (unless prohibited by Law and except in the case of requests that are not specific to this Agreement or the Transactions) as promptly as practicable deliver to the other Party prompt (but in no event later than two Business Days before such disclosure) notice before issuing any press release or public announcement concerning this Agreement or the Transactions, Purchaser and the Sellers shall consult with each other before issuing any press release or public announcement concerning this Agreement or the Transactions, and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed). From and after the Closing, the Purchaser and the Sellers may make public statements with respect to this Agreement or the Transactions so long as such announcements do not disclose the specific terms or conditions of this Agreement, except where such terms and conditions have already been disclosed as required by Law or Bankruptcy Court requirement; provided, that the issuing party shall use its commercially reasonable efforts to consult with the other party with respect to the text thereof to the extent practicable.

8.8 **Certain Payments or Instruments Received from Third Parties.** To the extent that, after the Closing Date, (a) Purchaser receives any payment or instrument that is for the account of a Seller according to the terms of this Agreement or relates primarily to any business or business segment of the Sellers other than the Purchased Assets, Purchaser shall promptly deliver such amount or instrument to the relevant Seller, and (b) if any of the Sellers or any of their Affiliates receives any payment that is for the account of Purchaser, the Sellers shall, and shall cause their Affiliates to, promptly deliver such amount or instrument to Purchaser. All amounts

due and payable under this Section 8.8 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party. Any payments received under this Section 8.8 by the applicable Party will be treated by the other Party as being received by the applicable Party in its capacity as an agent for the other Party solely for U.S. federal income Tax purposes.

8.9 **Confidentiality**. Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated [●] between the Company and Purchaser (the “**Confidentiality Agreement**”), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement may be publicly filed in the Bankruptcy Court and further made available by the Sellers to prospective bidders and that, except as prohibited herein, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise.

8.10 **Misallocated Assets**. If, following the Closing, any right, property or asset not forming part of the Business is found to have been transferred to Purchaser in error, either directly or indirectly, Purchaser shall (i) transfer, or shall cause its Affiliates to transfer, at no cost to the Sellers, such right, property or asset (and any related Liability) as soon as practicable to one or more of the Sellers as indicated by the Company and (ii) where permitted by the terms on which the Purchaser has the right to such asset, hold the asset (or part thereof), and any monies, goods or other benefits arising after the Closing by virtue of it, as agent of and trustee for the Sellers and allow the Sellers from and after the Closing to have full enjoyment and use of such asset and Seller shall bear all burdens relating to such asset. If, following the Closing, any right, property or asset forming part of the Business (other than any Excluded Asset) is found to have been retained by the Sellers in error, either directly or indirectly, the Company shall (i) transfer, or shall cause the other Sellers to transfer, at no cost to Purchaser, such right, property or asset (and any related Liability) as soon as practicable to Purchaser and (ii) ensure that the applicable Seller shall where permitted by the terms on which such Seller has the right to such asset, hold the asset (or part thereof), and any monies, goods or other benefits arising after the Closing by virtue of it, as agent of and trustee for Purchaser and allow the Purchaser from and after the Closing to have full enjoyment and use of such asset and Purchaser shall bear all burdens relating to such asset. For the avoidance of doubt, the Parties understand and agree that the Excluded Assets are not intended to, and shall not, be transferred to Purchaser or any of its Affiliates and the Sellers shall retain such rights, properties and assets.

8.11 **Seller Marks**. As soon as reasonably practicable after the Closing, but in no event more than 60 days after the Closing Date, Purchaser shall: (i) cease using any trademarks, service marks, trade names, slogans, domain names, social media identifiers, logos, trade dress and other identifiers of source, and registrations and applications for registrations hereof (including all goodwill associated with the foregoing) (collectively, “**Trademarks**”), in each case, incorporating or containing “Cloud Peak” or any word or expression similar thereto or constituting an abbreviation or derivation thereof (collectively and together with all other Trademarks owned by the Sellers, the “**Seller Marks**”) and (ii) to the extent applicable, remove any and all Seller Marks

from any Purchased Assets. Following the Closing, except as provided herein, Purchaser shall not use any Seller Mark or any name or term confusingly similar to any Seller Mark in connection with the sale, marketing, promotion, or advertising of any products or services, in the corporate or doing business name of any of its Affiliates or otherwise in the conduct of its or any of its Affiliates' businesses or operations. Following the Closing, Purchaser will not be entitled to adopt, use, license or employ, and shall have no right to any Seller Marks, and Purchaser shall not otherwise hold themselves out as having any affiliation with the Sellers. For clarity, nothing in this Section 8.11 restricts Purchaser from using or referencing the Seller Marks in (x) a non-trademark manner to describe or provide information regarding the history of the Business or (y) as required by applicable Law.

IX. CONDITIONS TO CLOSING

9.1 **Conditions Precedent to Obligations of Purchaser.** The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of the Sellers contained in this Agreement (disregarding any "materiality" or "Seller Material Adverse Effect" qualifications contained therein) shall be true and correct in all respects as of the Closing (except such representations and warranties that expressly address an earlier date, which such representations and warranties shall be true and correct as of such earlier date), except where the failure to be so true and correct has not, individually or in the aggregate, had and would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized officer of the Company, dated the Closing Date, to the foregoing effect;

(b) the Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to or on the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of the Company, dated the Closing Date, to the foregoing effect; and

(c) the Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

9.2 **Conditions Precedent to Obligations of the Sellers.** The obligations of the Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser contained in this Agreement (disregarding any "materiality" or "Purchaser Material Adverse Effect" qualifications contained therein) shall be true and correct in all respects as of the Closing (except such representations and warranties that expressly address an earlier date, which such representations and warranties shall be true and correct as of such earlier date), except where the failure to be so true and correct has not, individually or in the aggregate, had and would not, individually or in the aggregate,

reasonably be expected to have a Purchaser Material Adverse Effect, and the Company shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and the Company shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(c) arrangements satisfactory to the Company shall be in place regarding the Required Bonding (under which, for the avoidance of doubt, neither the Sellers nor any of their Affiliates will be liable for the obligations of Purchaser or otherwise with respect to the post-Closing operation of the Business or with respect to any Assumed Liability), and the Company shall be satisfied that there have been no adverse developments or occurrences that would reasonably be expected to be material and adverse in the context of the transfer of one or more Transferred Permits/Licenses;

(d) Purchaser shall have delivered to the Sellers all of the items set forth in Section 4.3; and

(e) the Company shall be satisfied in its sole discretion that the bond agreements related exclusively to the Transferred Permits/Licenses (and related instruments) underlying the existing reclamation and surety bonds of the Sellers with respect to the Transferred Permits/Licenses will be terminated upon the completion of the transfer of the related Transferred Permits/Licenses.

9.3 **Conditions Precedent to Obligations of Purchaser and the Sellers.** The respective obligations of Purchaser and the Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and the Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered the Sale Order;

(c) [the waiting period applicable to the Transactions under the HSR Act shall have expired or early termination shall have been granted.]

9.4 **Frustration of Closing Conditions.** No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party's breach of any provision of this Agreement.

X. TAXES

10.1 **Transfer Taxes.** To the extent that any documentary, stamp, transfer, motor vehicle registration, sales, use, value added, excise and other similar Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arise from or relate to the consummation of the Transactions (collectively, “**Transfer Taxes”**), and are not eliminated through the application of section 1146(a) of the Bankruptcy Code, such Transfer Taxes will be borne by Purchaser, regardless of the Party on whom Liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Purchaser will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and, if required by applicable Law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

10.2 **Purchase Price Allocation.** Schedule 10.2 sets forth an allocation of the Purchase Price (and any other items properly treated as consideration for U.S. federal income Tax purposes) among the Purchased Assets in accordance with Section 1060 of the Code and the applicable Treasury Regulations promulgated thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate). The Sellers and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with Schedule 10.2. Neither the Sellers nor Purchaser will take any position (whether in audits, tax returns, or otherwise) that is inconsistent with Schedule 10.2 unless required to do so by applicable Law.

10.3 **Cooperation and Audits.** Upon reasonable request, Purchaser and its Affiliates will cooperate fully with the Sellers and their Affiliates in connection with the filing of Tax Returns and any audit, litigation, or other proceeding with respect to Taxes relating to the Purchased Assets. Such cooperation shall include making available to the Sellers and their Affiliates, as reasonably requested, all information, records and documents relating to Taxes governed by this Agreement for a period of three years following the Closing Date.

10.4 **Allocation of Non-Income Taxes.**

(a) Except as provided in Section 10.4(b), the Sellers shall be allocated and bear all Non-Income Taxes attributable to (i) any Tax period ending prior to the Closing Date and (ii) the portion of any Straddle Period ending prior to the Closing Date, and the Purchaser shall be allocated and bear all Non-Income Taxes attributable to (x) any Tax period beginning on or after the Closing Date and (y) the portion of any Straddle Period beginning on the Closing Date. For purposes of this Section 10.4(a), Non-Income Taxes that are based upon or related to sales or receipts imposed on a transactional basis (other than Non-Income Taxes described in clause (ii)) shall be allocated to the period in which the transaction giving rise to such Non-Income Taxes occurred.

(b) Notwithstanding anything to the contrary in this Agreement, (i) the Sellers shall be allocated and bear all Non-Income Taxes that are ad valorem, property and other similar Non-Income Taxes imposed on a periodic basis attributable to any Tax period ending on or prior to December 31, 2016, and (ii) Purchaser shall be allocated and bear all Non-Income Taxes that

are ad valorem, property and other similar Non-Income Taxes imposed on a periodic basis attributable to any Tax period beginning on or after January 1, 2017.

XI. MISCELLANEOUS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations, warranties, and covenants to be performed prior to the Closing contained in this Agreement or in any instrument delivered pursuant to this Agreement will not survive the Closing hereunder and all rights, claims and causes of action (whether in contract or in tort or otherwise, or whether at law or in equity) with respect thereto shall terminate at the Closing, and none of the Parties will have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof. The Sellers and their respective Affiliates, and any of their respective directors, officers, employees, stockholders, partners, members or representatives, will have no future liability under any post-Closing covenant herein or in any other agreement or instrument entered into in connection with the Transactions in the event that the Sellers sell all or substantially all of their assets or effect a plan of liquidation.

11.2 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each of the Sellers and Purchaser will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions and all proceedings incident thereto. Without limiting the foregoing, Purchaser will pay the filing fee required in connection with the HSR Act filing contemplated by Section 8.4(a).

11.3 Injunctive Relief.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to enforce specifically the terms and provisions of this Agreement, including specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or the Sellers, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or the Sellers, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

11.4 **Submission to Jurisdiction; Consent to Service of Process.**

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes, which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and will receive notices at such locations as indicated in Section 11.8 hereof; provided, however, that if the Chapter 11 Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York and any appellate court therefrom within the State of New York (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Legal Proceeding, in a New York state court sitting in Manhattan) and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.8; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

11.5 **Waiver of Right to Trial by Jury.** Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

11.6 **Entire Agreement; Amendments and Waivers.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

11.7 **Governing Law.** This Agreement will be governed by and construed in accordance with federal bankruptcy Law, to the extent applicable, and, where state Law is implicated, the Laws of the State of New York applicable to contracts made and performed in such State.

11.8 **Notices.** All notices and other communications under this Agreement will be in writing and will be deemed given (a) when delivered personally by hand, (b) when sent by email (with written confirmation of transmission) or (c) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and email addresses (or to such other address or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to the Sellers, to:

Cloud Peak Energy Inc.
385 Interlocken Crescent, Suite 400
Broomfield, Colorado 80021
Attention: Bryan J. Pechersky
Email: bryan.pechersky@cldpk.com

With a copy (which will not constitute notice) to:

Vinson & Elkins LLP
666 Fifth Avenue, 26th Floor
New York, New York 10103
Attention: David S. Meyer
Email: dmeyer@velaw.com

and

Vinson & Elkins LLP
2001 Ross Avenue, Suite 3900
Dallas, Texas 75201
Attention: Paul E. Heath
Email: pheath@velaw.com

If to Purchaser, to:

[●]
Attention:
Email:

With a copy (which will not constitute notice) to:

[●]
Attention:
Email:

11.9 **Severability**. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

11.10 **Assignment**. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either the Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that Purchaser shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 11.10, one or more Affiliates to (a) purchase the Purchased Assets and/or (b) assume the Assumed Liabilities, on and after the Closing Date (any such Affiliate of Purchaser that shall be properly designated by Purchaser in accordance with this clause, a “**Designated Purchaser**”); it being understood and agreed, however, that any such right of Purchaser to designate a Designated Purchaser is conditioned upon (i) such Designated Purchaser executing and delivering to the Sellers a counterpart to this Agreement, (ii) such Designated Purchaser being able to perform the applicable covenants under this Agreement (and make the same representations and warranties as Purchaser has made in Section 6.6, to the extent relating to the relevant portion of the Purchased Assets being acquired by such Designated Purchaser), and demonstrate satisfaction of the applicable requirements of Section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance for future performance, with respect to the applicable assumed Contracts and the assumed Leases, (iii) any such designation not creating any Liability (including any Liability relating to Taxes) for the Sellers or their Affiliates that would not have existed had Purchaser purchased the Purchased Assets and/or assumed the Assumed Liabilities, and which Liability is (A) not fully reimbursed by or on behalf of Purchaser prior to or at the Closing or (B) a Liability for which Purchaser or the applicable Designated Purchaser agrees, at its election, to provide an indemnity reasonably acceptable to the Sellers, and (iv) such designation not reasonably being expected to materially delay, prevent or hinder the consummation of the Transactions. No such designation shall relieve Purchaser of any of its obligations hereunder. Any breach hereof by a Designated Purchaser shall be deemed a breach by Purchaser. The above designation shall be made by Purchaser by way of a written notice to be delivered to the Sellers as soon as reasonably practicable after the date hereof and in no event later than the fifth (5th) day prior to the Closing Date, which written notice shall contain appropriate information about the Designated Purchaser(s) and shall indicate which Purchased Assets and Assumed Liabilities that Purchaser intends such Designated Purchaser(s) to purchase and/or assume, as applicable, hereunder. Upon any such permitted assignment, the references in this Agreement to the Sellers or Purchaser will also apply to any such assignee unless the context otherwise requires. Notwithstanding the foregoing, the Sellers may assign some or all of its rights or delegate some or all of its obligations hereunder to successor entities (including any liquidating trust) pursuant to a chapter 11 plan confirmed by the Bankruptcy Court.

11.11 **Non-Recourse**. None of the Parties to this Agreement, their Affiliates, or, in each case, any of their respective past, present or future directors, officers, employees, incorporators, members, partners, equityholders, managers, agents, attorneys, or other Representatives will have any Liability for any obligations or Liabilities of the Sellers or Purchaser, as applicable, under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party will have any Liability or obligation for any of the representations, warranties, covenants, agreements, obligations or Liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Legal Proceeding based on, in respect of, or by reason of, Transactions (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, Fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise. In no event will any Person be liable to another Person for any remote, speculative or punitive damages with respect to the Transactions.

11.12 **Counterparts**. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

11.13 **Time of Essence**. This Agreement contains a number of dates and times by which performance or the exercise of rights is due, and the parties hereto intend that each and every such date and time be the firm and final date and time, as agreed. For this reason, each party hereto hereby waives and relinquishes any right it might otherwise have to challenge its failure to meet any performance or rights election date applicable to it on the basis that its late action constitutes substantial performance, to require the other party or parties hereto to show prejudice, or on any equitable grounds. Without limiting the foregoing, time is of the essence in this Agreement.

11.14 **Construction**. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. Any information set forth in any Schedule or incorporated in any Section of this Agreement shall be considered to have been set forth in each other Schedule and shall be deemed to modify the representations and warranties in Article V of this Agreement whether or not such representations and warranties refer to such Schedule, to the extent that the relevance of such information is reasonably apparent from the face of such disclosure. In the event a subject matter is addressed in more than one representation and warranty in Article V, Purchaser shall be entitled to rely only on the most specific representation and warranty addressing such matter. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement or the Disclosure Schedules or Exhibits attached hereto is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business, and no party shall use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement or the Disclosure Schedules or

Exhibits in any dispute or controversy between the parties as to whether any obligation, item or matter not described or included in this Agreement or in any Schedule or Exhibit is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or is within or outside of the Ordinary Course of Business. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including any violation of Law or breach of contract). References to any Law, statute, ordinance, regulation, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of law of any Governmental Body shall refer to such as amended, supplemented, modified or replaced from time to time. To the extent that a representation or warranty contained in this Agreement addresses a particular issue with specificity (a “**Specific Representation**”), and no breach by the Sellers exists under such Specific Representation, the Sellers shall not be deemed to be in breach of any other representation or warranty (with respect to such issue) that addresses such issue with less specificity than the Specific Representation and if such Specific Representation is qualified or limited by the Sellers’ Knowledge, or in any other manner, no other representation or warranty shall supersede or limit such qualification in any manner.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date hereof.

PURCHASER:

[●]

By: _____
Name:
Title:

COMPANY:

CLOUD PEAK ENERGY INC.

By: _____
Name:
Title:

ADDITIONAL SELLERS:

[•]

By: _____
Name:
Title:

EXHIBIT 2 TO ORDER

AUCTION AND SALE NOTICE

)	Chapter 11
In re)	
)	Case No. 19 – 11047 (KG)
CLOUD PEAK ENERGY INC., <i>et al.</i> ,)	
)	
Debtors. ¹)	
)	

**NOTICE OF FILING OF PROPOSED ORDER
RELATED TO THE AUCTION AND SALE OF THE DEBTORS' ASSETS**

PLEASE TAKE FURTHER NOTICE that, on [•], 2019, the United States Bankruptcy Court for the District of Delaware (the “*Court*”) entered that certain order approving, among other things, the implementation of the Bidding Procedures, in connection with the one or more sales of all, substantially all, or any combination of the Debtors’ assets [Docket No. [•]], a copy of which is annexed hereto as **Exhibit I** (the “*Bidding Procedures Order*”). A copy of the Bidding Procedures is annexed hereto as **Exhibit II**. Pursuant to the Bidding Procedures Order, a final hearing to approve the Auction and Sale is scheduled to take place on July 18, 2019 at [•]m. (prevailing Eastern Time).

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that, to ensure that the Auction and Sales process maximizes value for the benefit of the Debtors' estates, the following key dates and deadlines have been established by the Debtors, pursuant to the Bidding Procedures Order are as follows:

- a. **Indication of Interest Deadline.** June 13, 2019, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which any party interested in a transaction shall submit a non-binding indication of interest.
- b. **Bid Deadline.** July 8, 2019, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which bids for the Assets (as well as the deposit and all other documentation required under the Bidding Procedures for Qualified Bidders) must be submitted.
- c. **Stalking Horse Bidder and Bid Protections.** The Debtors may, at any time until two calendar days prior to the date of the Auction, select one or more parties to be a Stalking Horse Bidder with respect to some or all of the Debtors' Assets.
- d. **Auction.** July 11, 2019, at 11:00 a.m. (prevailing Eastern Time) is the date and time that the Auction, if any, will be held at Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York, 10019, or such later date, time, and location, as selected by the Debtors.
- e. **Sale Objection Deadlines.** July 16, 2019, at 11:00 a.m. (prevailing Eastern Time) is the deadline by which all objections to the Sale (including to any Winning Bids or any Assigned Contract Objection (other than the Supplemental Assigned Contract Objections which are subject to the Supplemental Assigned Contract Objection Deadline)) must be filed with the Court.
- f. **Sale Hearing.** The hearing approving the Sale to the Winning Bidder(s) shall take place before the Court on July 18, 2019, at [•]:00 [•].m. (prevailing Eastern Time).

Dated: [•]
Wilmington, Delaware

/s/ [•]

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EXHIBIT I TO AUCTION AND SALE NOTICE

BIDDING PROCEDURES ORDER

EXHIBIT II TO AUCTION AND SALE NOTICE

BIDDING PROCEDURES

EXHIBIT 3 TO ORDER

CURE NOTICE

(a) the Bidding Procedures, a copy of which is attached hereto as **Exhibit II**, and (b) procedures for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (collectively, the “**Assigned Contracts**”). Pursuant to the Bidding Procedures Order, a final hearing to approve the Sale (the “**Sale Hearing**”) is scheduled to take place on July 18, 2019 at [•]m. (prevailing Eastern Time).

3. The Debtors hereby provide notice (the “**Cure Notice**”) that it may assume and assign the schedule of Assigned Contracts listed on **Exhibit III**, attached hereto, to a purchaser of the Debtors’ Assets. The Debtors’ records reflect that all postpetition amounts owing under the Assigned Contracts have been paid and that, other than the cure amounts listed on the Cure Notice (the “**Cure Costs**”), there are no other defaults under such Assigned Contracts. The Cure Notice also sets forth any proposed assurance of future performance (the “**Adequate Assurance**”) with respect to each Assigned Contract.

4. Objections, if any, to a proposed assumption and assignment of the Assigned Contracts or the proposed Cure Costs or Adequate Assurance must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and, if the objection pertains to (x) the proposed Cure Costs, state the cure amount alleged to be owed to the objecting Contract Counterparty, or (y) the proposed Adequate Assurance, state the adequate assurance amount purportedly required, together with any applicable and appropriate documentation in support thereof; and be filed with the Court no later than July 16, 2019, at 11:00 a.m. (prevailing Eastern Time).

5. If any objection to the proposed Cure Cost or assumption and assignment is timely filed, and the parties are unable to consensually resolve the dispute, such objection will be resolved at a hearing on July 18, 2019, at [•]:00 [•].m. (prevailing Eastern Time) before the Honorable Kevin Gross, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, DE 19801.

6. If an Assigned Contract Objection is not satisfactorily resolved, the Winning Bidder may determine that such Assigned Contract should be rejected and not assigned, in which case the Winning Bidder will not be responsible for any Cure Costs or Adequate Protection with respect to such contract.

7. If you do not timely file and serve an objection as stated above, the Court may grant the relief requested in the Motion with no further notice or hearing and any party to an Assigned Contracts that is so assumed will deemed to have consented to the assumption and assignment of the assigned contract and the Cure Costs, if any, and will be forever barred from objecting to the assumption and assignment of such assigned contract and rights thereunder, including the Cure Costs, if any, and from asserting any other claims related to such assigned contract against the Debtors or the Winning Bidder.

8. Notwithstanding the foregoing, the inclusion of Assigned Contracts on **Exhibit III** hereto, does not: (a) obligate the Debtors to assume any Assigned Contract listed thereon or obligate the Winning Bidder to take assignment of such Assigned Contract; or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract or

unexpired lease. Only those Assigned Contracts that are included on a schedule of assumed and assigned contracts attached to the definitive sale agreement with the Winning Bidder (including amendments or modifications to such schedules in accordance with such agreement) will be assumed and assigned to the Winning Bidder.

Dated: [•]
Wilmington, Delaware

s/ [•]
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EXHIBIT I TO CURE NOTICE

BIDDING PROCEDURES ORDER

EXHIBIT II TO CURE NOTICE

BIDDING PROCEDURES

EXHIBIT III TO CURE NOTICE

ASSIGNED CONTRACTS